

26th September, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 26th September, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan E. Elliott), Adams, Angeles, Armstrong, Backhouse, Bobesich, Carey, Carpenter-Gunn, Cole, Cronk, Crowe, Curtis, Eberts, MacKenzie, Marrocco, Millar, Murray, Puccini, Sealy, Swaye, Topp and Wilson.

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The reporter was sworn.

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IN PUBLIC

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DISCIPLINE COMMITTEE

Mr. Michael Brown, Senior Counsel-Discipline introduced Mr. Brian Gover who acted as Duty Counsel.

Re: Larry SPODEK - North York

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye withdrew for this matter.

Mr. Peter Cavanagh appeared for the Society and Mr. J. Jerome Cusmariu appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 23rd May, 1996, together with an Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 24th May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (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:

26th September, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C. Chair
Robert B. Aaron
Tamara K. Stomp

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

Peter J. Cavanagh
for the Society

LARRY SPODEK
of the City
of North York
a barrister and solicitor

J. Jerome Cusmariu
for the solicitor

Heard: September 19 & 20, 1995
March 4, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On July 5, 1994 Complaint D198/94 was issued; and on October 31, 1994 Complaint D296/94 was issued against Larry Spodek alleging that he was guilty of professional misconduct.

The matter was heard in public on September 19 and 20, 1995, and March 4, 1996 before this Committee comprising Gerald A. Swaye, Q.C., Chair, Robert B. Aaron and Tamara K. Stomp. The Solicitor attended the hearing and was represented by J. Jerome Cusmariu. Peter J. Cavanagh appeared on behalf of the Law Society.

DECISION

Complaint D198/94 was converted to an Invitation to Attend.

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

Complaint D296/94 (as amended)

2. a) With respect to the purchase and sale and financing of 813 Sheppard Avenue West, North York,
 - (i) the Solicitor misled his client, Equitable Trust, by knowingly failing to disclose that:
 - B. the transaction in respect of which Equitable Trust was providing mortgage financing was a "flip" of the property at a substantially higher purchase price than the purchase price for the original sale;
 - D. Shaffiza Shaffick would not receive the purchase price stipulated in the agreement of purchase and sale of \$589,000 upon closing.

26th September, 1996

- (iii) the Solicitor failed to protect the interest of his client, the second vendor, Shaffiza Shaffick.
- (b) With respect to the purchase and sale and financing of 151 Finch Avenue West, North York,
 - (i) the Solicitor misled his client, Confederation Trust Company, by knowingly failing to disclose that:
 - A. the transaction in respect of which Confederation Trust Company was providing mortgage financing involved a "flip" of the property at a substantially higher purchase price than the original transaction;
 - C. Shaffiza Shaffick would not receive the purchase price stipulated in the agreement of purchase and sale of \$489,000 upon closing;
- (iii) the Solicitor failed to protect the interest of his client, the second vendor, Shaffiza Shaffick.

Evidence

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

Complaint D296/94

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D296/94 and is prepared to proceed with a hearing of this matter on September 19, 1995.

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 D296/94 and admits the particulars contained in this Agreed Statement of Facts.

IV. FACTS

4. The Solicitor is fifty years of age. He was called to the Bar on March 24, 1973. The Solicitor practises law as a sole practitioner with an office in Downsview, Ontario.

813 Sheppard Avenue West, North York, Ontario

5. An Agreement of Purchase and Sale was entered into between the original owner of 813 Sheppard Avenue West, North York, Ontario, Nellie MacLeod ("MacLeod") as vendor and Shafiza Shaffick ("Shaffick") as purchaser (the "First Purchase Agreement"). The First Purchase Agreement was entered into in September, 1988 for a purchase price of \$447,000. The closing date was July 31, 1989.

26th September, 1996

Agreement of Purchase and Sale, Joint Brief of Documents, Tab 1

6. A second Agreement of Purchase and Sale was entered into in November, 1988 between Shaffick as vendor and Gavin Doobay as purchaser (the "Second Purchase Agreement"). This agreement was also to close on July 31, 1989. The purchase price was \$589,000.

Agreement of Purchase and Sale, Joint Brief of Documents, Tab 2

7. On July 18, 1989 a mortgage commitment was given by the Equitable Trust Company ("Equitable Trust") for a loan amount equivalent to the lesser of \$340,000 or 58% of the appraised value of the property. This commitment was addressed to Gavin and Basil Doobay. Mr. Spodek received a copy of the mortgage commitment by fax on July 20, 1989. He received written instructions to act for Equitable Trust on August 1, 1989.

Mortgage Commitment, Joint Brief of Documents, Tab 6

8. The second purchaser, Gavin Doobay entered into the Second Purchase Agreement on behalf of his father, Basil Doobay. Basil Doobay and Gavin Doobay were to purchase the property, in trust, for an investor group which included Ruth Spodek, the wife of the Solicitor.

Declaration of Trust, Joint Brief of Documents, Tab 9

9. The Solicitor was retained by Basil Doobay to represent the purchasers under the Second Purchase Agreement as well as the vendor under the Second Purchase Agreement, Shaffick. Shaffick is the wife of Basil Doobay. The Solicitor was also retained to represent Equitable Trust in connection with the transaction. Equitable Trust had committed to advance \$340,000 on a residential mortgage on the property.

Acknowledgement and Direction, Joint Brief of Documents, Tab 8

Statement of Adjustments, Joint Brief of Documents, Tab 4

Client Trust Ledgers, Joint Brief of Documents, Tab 3

Mortgage Commitment, Joint Brief of Documents, Tab 6

10. MacLeod was paid the purchase price under the First Purchase Agreement through the mortgage advance of Equitable Trust, through additional funds provided by the investor group and through a vendor take back mortgage of \$100,000. The client ledger card maintained by the Solicitor for Shaffick in connection with this transaction discloses receipt of funds from Equitable Trust in the amount of \$339,325 as well as three payments each in the amount of \$2,366.60 from Basil Doobay, Noel Frias (another investor) and the Solicitor, all on August 1, 1989. The Statement of Adjustments in connection with the First Purchase Agreement shows that the remaining funds needed to complete the transaction were to be provided in the form of a second mortgage back to MacLeod, the original vendor.

Client Trust Ledgers, Joint Brief of Documents, Tab 3

Statement of Adjustments, Joint Brief of Documents, Tab 4

11. The residential mortgage loan commitment given by Equitable Trust was based upon an application for a mortgage loan in respect of the purchase of the property for a purchase price of \$589,000. The mortgage loan which was authorized represented approximately 58% of the said purchase price. The mortgage commitment indicates a charge of \$175 as a property appraisal fee.

26th September, 1996

Loan Application, Joint Brief of Documents, Tab 5

12. By letter dated August 1, 1989, Equitable Trust wrote to the Solicitor enclosing the mortgage commitment and requesting that the Solicitor represent it in connection with the transaction. The Solicitor did not disclose to Equitable Trust that the ultimate purchaser of the property would hold it in trust for an investor group which included the wife of the Solicitor. The Solicitor did not disclose to Equitable Trust that, upon closing, only \$447,000 would be advanced. The Solicitor did not disclose to Equitable Trust that the second vendor, Shaffick, would receive no proceeds or security upon closing of the Second Purchase Agreement.

13. The transactions closed on August 1, 1989. A Transfer/Deed of Land was registered on August 1, 1989 as Instrument No TB 624376 between MacLeod as transferor and Gavin Doobay and Basil Doobay, as tenants in common, as transferees showing a purchase price of \$447,000. The Land Transfer Tax Affidavit sworn by the purchasers was taken by Mr. Spodek and also shows total consideration for the transaction of \$447,000.

Transfer/Deed of Land, Joint Brief of Documents, Tab 12

14. Upon closing, MacLeod was paid the proceeds of sale under the First Purchase Agreement in the form of cash and a vendor take back second mortgage in the amount of \$100,000. Shaffick received no proceeds of sale. The Solicitor prepared no mortgage or other security to be given by Gavin and Basil Doobay as purchasers to Shaffick to evidence or secure payment of the purchase price under the Second Purchase Agreement.

15. Subsequent to the closing on August 8, 1990, the Solicitor wrote to the Ontario Ministry of Revenue to advise that the consideration box on the Transfer/Deed was erroneously typed as \$447,000 and not \$589,000. The Solicitor enclosed his trust cheque in the amount of \$2,840 representing the additional land transfer tax owing because of the higher purchase price.

Letters, Joint Brief of Documents, Tab 13

16. The mortgage given to Equitable Trust later went into default and the property was sold under power of sale for \$247,000. An action brought by Equitable Trust against the Solicitor was settled by the Solicitor, without admission of liability, on the basis of a payment of \$25,000. Equitable suffered a loss on this mortgage of in excess of \$140,000.

151 Finch Avenue West, North York, Ontario

17. The original owners and initial vendors of this property were Herbert and Sarah Kirkpatrick (the "Kirkpatricks"). An Agreement of Purchase and Sale dated August 8, 1988 was entered into between the Kirkpatricks as vendors and Shafiza Shaffick ("Shaffick") as purchaser (the "First Purchase Agreement"). The purchase price was \$385,000.

Agreement of Purchase and Sale, Joint Brief of Documents, Tab 14

18. In November, 1988, a second purchase agreement was entered into between Shaffick as vendor and 541960 Ontario Ltd. ("541960") as purchaser (the "Second Purchase Agreement"). The purchase price on the Second Purchase Agreement was \$489,000.

Agreement of Purchase and Sale, Joint Brief of Documents, Tab 15

19. The Solicitor represented Shaffick as initial purchaser and secondary vendor and also represented 541960 as secondary purchaser.

26th September, 1996

Direction, Joint Brief of Documents, Tab 19
Client Trust Ledger, Joint Brief of Documents, Tab 16

20. 541960 was owned or controlled by one Noel Frias ("Frias"). Frias obtained from Confederation Trust Company ("Confederation") a mortgage loan commitment dated July 17, 1989 in the amount of \$356,250. The mortgage commitment required that Confederation be provided with a satisfactory appraisal indicating a minimum market value of \$475,000 in respect to the subject property. The mortgage advance represents 75% of this minimum appraised value. Confederation appointed the Solicitor to act on its behalf on this transaction. The mortgage commitment required that, as additional security, a hypothecation of \$50,000 of a Confederation term deposit be provided to Confederation. It was a condition of release of the mortgage advance that the Solicitor be added to the mortgage as a guarantor. It was also a condition of release of the mortgage advance that Confederation be provided with a signed statutory declaration re downpayment confirmation.

Mortgage Commitment, Joint Brief of Documents, Tab 18

21. The client ledger card maintained by the Solicitor in connection with the purchase and sale of the property in question by Shaffick shows a receipt of funds on July 31, 1989 from Confederation of \$356,085.32. The said client ledger card also shows receipt of funds from Frias, Basil Doobay and Spodek of \$8,870 each.

Client Trust Ledger, Joint Brief of Documents, Tab 16

22. The transaction was completed on August 1, 1989. A Transfer/Deed of Land was registered on that date as Instrument No TB624351 from the Kirkpatrick's as transferors to 541960 as transferee. The purchase price shown on the Deed was \$489,000.

Transfer/Deed of Land, Joint Brief of Documents, Tab 20

23. Shaffick received no proceeds from the sale of the property. There was no mortgage or other security prepared by the Solicitor and provided by 541960 to her on closing to evidence or secure payment of the purchase price under the Second Purchase Agreement. The Kirkpatrick's were paid the purchase price of \$385,000 (after usual adjustments) and title was taken by 541960. Confederation received a mortgage against the property as securing the principal sum of \$356,250. The mortgage was guaranteed by Frias, his wife and the Solicitor.

Transfer/Deed of Land, Joint Brief of Documents, Tab 20
Mortgage/Charge of Land, Joint Brief of Documents, Tab 21

24. A Declaration of Trust was executed by 541960, Frias, Ruth Spodek (wife of the Solicitor) and Basil Doobay by which it was agreed that the property would be held by the registered owner in trust for Doobay, Frias and Ruth Spodek as beneficiaries, as an equal one-third share each.

Declaration of Trust, Joint Brief of Documents, Tab 22

25. Subsequent to the completion of this transaction, on December 15, 1989, an additional mortgage was registered against the property securing the principal sum of \$50,000 in favour of Ruth Spodek as chargee. This mortgage was security for the sum of \$50,000 paid or to be paid by the Solicitor or his wife to Confederation in the form of cash collateral to be held as additional security for the Confederation mortgage loan.

26th September, 1996

Mortgage/Charge of Land, Joint Brief of Documents, Tab 23

26. Prior to closing, an appraisal from Jones, McKittrick, Somer was provided to Confederation which showed the applicant to be Shaffick and which appraised the property, as at June 24, 1989, at \$475,000.

Property Appraisal, Joint Brief of Documents, Tab 17

27. The Solicitor did not disclose to his client, Confederation that:

- the downpayment was not \$122,250 as indicated in the mortgage application but only \$36,610 (\$26,610 on closing plus \$10,000 initial deposit). Although Confederation requested confirmation of the downpayment in its July 17, 1989 commitment letter no such confirmation was provided;
- the vendor (Shaffick) would not receive the purchase price stipulated in the purchase agreement or any proceeds or security upon closing;

28. After Confederation went into liquidation, this mortgage was transferred to the Toronto-Dominion Bank. The Bank sold the property under power of sale in June, 1995 for \$210,000. At that time, the principal balance of the mortgage debt was \$292,714.95 with unpaid interest of \$16,188.01.

V. PRIOR DISCIPLINE

29. The Solicitor has had no prior discipline.

DATED at Toronto, this 19th day of September, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Larry Spodek be suspended for a period of three months and that such suspension should commence August 1, 1996.

REASONS FOR RECOMMENDATION

The hearing in this matter commenced on September 19, 1995 and this Committee heard evidence on that day from Amy Speers, employee for Confederation Trust, a loan officer, regarding the transaction of 151 Finch Avenue West. The hearing continued on September 20, 1995 when evidence was also heard from the Solicitor himself, but that testimony was not completed and the hearing was adjourned to recommence another day. Because of the illness of one of the participants, the hearing could not reconvene until March 4, 1996. At that time, no further evidence was heard, but an amendment to Complaint D296/94 was made in accordance with that set out in this decision and an Agreed Statement of Facts was proceeded on.

Based on the admissions made in the Agreed Statement of Facts, findings of misconduct were made in relation to two real estate transactions, one involving 813 Sheppard Avenue West, North York and one in relation to 151 Finch Avenue West, North York.

26th September, 1996

This Committee wishes to note that the Complaint has been amended and state that our finding of penalty and reasons therefore relate only to those particulars in which misconduct has been found. However, the Committee did inquire of counsel and both agreed that the evidence heard could properly be taken into consideration as well as the facts contained in the Agreed Statement of Facts.

In the Committee's view, the essence of the misconduct lies in the failings of the Solicitor to adequately represent his clients in a situation which clearly contained conflict aggravated by his personal financial interests therein.

In particular, both transactions dealt with "flips" that resulted in the institutional mortgage lenders failing to receive full disclosure from their lawyer, the Solicitor. Although not unusual for the same lawyer to act on a purchase as well as the mortgage financing the purchase, the lawyer has an absolute obligation to disclose material facts when doing so. In this case, the Solicitor failed:

Re: 813 Sheppard

1. To disclose to Equitable Trust that the ultimate purchaser would hold the property in trust for an investor group. In this case, Equitable Trust thought the purchasers were Gavin and Basil Doobay.

2. To disclose that the investor group included the wife of the Solicitor, Ruth Spodek.

3. To disclose to Equitable Trust that only \$447,000.00 would be advanced to pay for the property. This \$447,000.00 is made up of approximately \$340,000.00 from the Equitable Trust mortgage, approximately \$7,000.00 each from three investors, including the Solicitor, and a mortgage back to the first vendor. In fact, Equitable Trust advanced the mortgage funds of approximately \$340,000.00 on the basis of a \$589,000.00 purchase price, not the \$447,000.00 that was actually paid. As the Solicitor acted for Equitable Trust, he had a duty to disclose and did not.

4. To disclose that it was really the first vendor, Mrs. MacLeod who received the mortgage money from Equitable Trust and who took a second mortgage back. Equitable Trust did not know the second vendor, Mrs. Shaffick would not receive any proceeds or security. In this regard, it should be noted that Mrs. Shaffick is the wife of Basil Doobay, one of the purchasers. It is no surprise to the Committee that Mrs. Shaffick did not complain to the Law Society or Mr. Spodek of being by-passed in the transactions. It is obvious this was the intention, but there is no evidence to suggest Equitable knew that and it was the Solicitor's obligation to tell them.

Re: 151 Finch

1. To disclose to the mortgage lender, Confederation Trust that the down payment was not \$122,250.00 as indicated in the mortgage application, but was in fact only \$36,610.00.

The Kirkpatrick's, the first vendors, were paid a total of \$385,000.00 which was the purchase price according to the original purchase and sale agreement. But the amount advanced under the mortgage was \$356,250.00 as Confederation Trust specifically authorized the mortgage in the amount of seventy-five percent of the minimum appraised value represented to them as \$475,000.00. The deposit of \$10,000.00 was paid by the ultimate purchaser, a numbered company which was operated or owned by one Noel Frias. To close, the Solicitor, Basil Doobay and Noel Frias each contributed \$8,870.00 in funds. Therefore, the mortgage company almost one hundred percent financed the purchase from the original purchasers.

26th September, 1996

2. There is no evidence that Confederation Trust knew of the original agreement of purchase and sale at the price of \$385,000.00. Further, Confederation Trust did not know that the first purchaser (second vendor), Shaffick, would not receive the purchase price stipulated in the purchase agreement or any proceeds or security upon closing.

It is noted that in the case of 151 Finch, Confederation Trust must have known of the Solicitor's personal involvement in the matter as they required the Solicitor to provide additional security by way of hypothecation of a \$50,000.00 term deposit and be added as a guarantor to the mortgage.

Based upon the foregoing, the Committee finds the particulars of misconduct well established. It was very obvious to the Committee exactly what happened to the Solicitor in this case, that being, that the Solicitor became personally involved in the transactions as an investor. Whether he came to be an investor at the last minute, or planned to be one all along, is still not clear. The portrayal of the Solicitor as a dupe of unsuspecting vendors, is not appropriate as the Solicitor knew full well what he was doing and extended his own funds to make sure these transactions closed. Obviously, he did so because he had or wanted to acquire a private interest in the matters.

It is highly probable that the only reason these matters have come to our attention is because a loss occurred in relation to both. The market did not continue to sky-rocket and the properties could not be maintained and were sold at a loss. The evidence tells us it was the Solicitor who shouldered the losses and this is in and of itself a penalty to him. But it is clear that if the market continued to rise, there would have been a sale of the properties at a price sufficient to pay off the mortgage and no one would have complained. The Solicitor would have been paid back for his investment and no one would have been the wiser. The success of the investment would have resulted in the hiding of the misconduct. Simply put, the Solicitor got caught and the point of the exercise here is to make clear to him and others that he was derelict in his professional duties.

Also, the Committee wishes to comment upon the testimony of the Solicitor, at least to the extent that we heard it. It had much to be desired. The Solicitor was evasive. Credibility was definitely in question. It is noteworthy that the Solicitor did not continue the charade a second day, but instead made the admissions of misconduct. During his testimony, it was obvious the Solicitor was nervous with his explanations as they clearly could not hold water.

For example, the Solicitor tried to tell us that he did not know "Shez Shaffick" the purchaser of Sheppard was the same person as "Shaffiza Shaffick" the purchaser of Finch. It is obvious to us that this person was one and the same and we find that the Solicitor was being less than truthful in not admitting same in his oral testimony. As well, the Solicitor said in his testimony that he did not know of Rule 5 of the Rules of Professional Conduct. Further, and most outlandish, was the Solicitor's suggestion that the institutional lender he represented ought to have known facts which he never told it. It was left up in the air as to how the lender would know the facts without receiving the information from the Solicitor. There are numerous other examples we have failed to detail here. Nonetheless, the Solicitor was adamant in oral testimony that he had done nothing wrong. By the second day, the Solicitor had agreed to misconduct and although his initial testimony can be considered an aggravating factor, his ultimate admissions may be considered mitigating.

It was jointly submitted to the Committee that a suspension of three months is the appropriate penalty and that such suspension should commence August 1, 1996. Upon retiring, this Committee gave no indication as to whether the submission was acceptable or not. The Solicitor did not have the opportunity to call character or other evidence on penalty, nor was the Committee provided case law in support of the penalty.

26th September, 1996

Notwithstanding, the Committee accepts the joint recommendation. Great deference is paid to the joint recommendation in accordance with the principles regarding same. The members of this Committee are familiar with some of the ever expanding case law and penalties and being mindful of the fact that no two cases are alike, the Committee finds the recommended penalty is not outside the range for this type of misconduct. Further, it is of note that this is a joint submission made where the Solicitor is represented by his own counsel at hearing. In addition, we believe the penalty balances the various aggravating and mitigating factors in the case.

It is our view that there is no need for other conditions to be placed on the Solicitor for his continuation of practice once his suspension is complete. The Solicitor has no prior discipline history. Further, we acknowledge from the evidence we have heard that the Solicitor is well known in his community and generally, highly respected. He has practised for twenty-four years and has regularly sat as a Small Claims Court Judge. It appears to us that the process of the proceedings, and the penalty imposed will be of a sufficient deterrent, both specifically and generally.

Larry Spodek was called to the Bar March 24, 1973.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of May, 1996

Gerald A. Swaye, Q.C.

There were no submissions, the finding was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months, such suspension to commence August 1st, 1996.

Both counsel made submissions in support of the recommended penalty.

Counsel for the solicitor requested that the suspension commence November 1st, 1996.

There was no objection by the Society's counsel.

It was moved by Mr. Millar, seconded by Mr. Wilson that the solicitor be suspended for a period of 3 months commencing November 1st, 1996.

Carried

Re: William Henry GILES - Toronto

The Secretary placed the matter before Convocation.

Messrs. Carey and Armstrong withdrew for this matter.

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

26th September, 1996

Convocation had before it the Report of the Discipline Committee dated 28th June, 1996, together with an Affidavit of Service sworn 19th July, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 3rd July, 1996 (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

Thomas J. P. Carey, Chair
Robert P. Armstrong, Q.C.
Larry A. Banack

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

Neil Perrier
for the Society

WILLIAM HENRY GILES
of the City
of Toronto
a barrister and solicitor

Not represented
for the solicitor

Heard: November 23, 1995
March 22, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 8, 1994, Complaint D153/94 was issued against William Henry Giles alleging that he was guilty of professional misconduct.

The matter was heard in public on August 15, 1995, November 23, 1995 and March 22nd, 1996 before this Committee composed of Thomas J. Carey, Chair, Robert P. Armstrong, Q.C., and Larry A. Banack. The Solicitor was not present and was not represented by counsel. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D153/94

2. a) He failed to cooperate with the Law Society's representative pursuant to section 18 of Regulation 708 of the Law Society Act by failing to produce books and records in accordance with the requirement of section 15 of the Regulation, despite letters dated January 20, 1994, February 3, 1994 and April 5, 1994 and telephone conversations with him on February 4, 1994, February 28, 1994, March 21, 1994, March 30, 1994 and telephone messages left for the Solicitor on March 7, 1994 and March 31, 1994.

EVIDENCE

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D153/94 and is prepared to proceed with a hearing of this matter on February 28 and March 1, 1995.

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 D153/94 and this Agreed Statement of Facts and admits the particular contained therein.

IV. FACTS

4. The Solicitor was called to the Bar on June 28, 1956.
5. On January 20, 1994, the Law Society's Examiner, Lorraine Campbell, sent a letter to the Solicitor informing him that an audit was to be conducted on the books and records of his practice. (Tab 1, Document Book)
6. On February 3, 1994, the Examiner sent a follow-up letter to the Solicitor, requesting his reply to her letter of January 20, 1994 and referring to his obligation to respond to the Society pursuant to Rule 13, Commentary 3. (Tab 2, Document Book)
7. On February 4, 1994, the Solicitor called the Examiner and informed her that he was completing an Estate file and that he would call her in two weeks to set up an appointment. (Tab 3, Document Book)
8. The Solicitor did not contact the Examiner within two weeks of February 4, 1994. On February 23, 1994, the Examiner left a message with the Solicitor's receptionist requesting him to call her in order to set up an appointment. (Tab 4, Document Book)

26th September, 1996

9. On February 28, 1994, the Examiner left a message on the Solicitor's answering machine requesting him to call her in order to set up an appointment for the audit. The Solicitor responded to the Examiner's message of February 28, 1994 by contacting the Examiner and scheduling an appointment for March 8, 1994. He also advised the Examiner that he would have his bookkeeper, Jane, call to confirm a place to conduct the audit. (Tab 5, Document Book)

10. On March 4, 1994, the Solicitor's bookkeeper, Jane, contacted the Examiner's secretary and advised that the Solicitor was going out of town that day and would not be returning until March 13, 1994. Jane also stated that she was very ill and would not be able to keep the appointment which was scheduled for March 8, 1994. (Tab 6, Document Book)

11. On March 7, 1994, the Examiner left a message on the Solicitor's answering machine for Jane to call her. The Examiner did not receive a response. (Tab 7, Document Book)

12. On March 14, 1994, the Examiner telephoned the Solicitor's office and asked the receptionist to place her in contact with either the bookkeeper or the Solicitor. She was informed by the receptionist that the bookkeeper was ill and that the Solicitor was out of town until Friday of that week. (Tab 8, Document Book)

13. On March 21, 1994, the Examiner telephoned the Solicitor and scheduled an appointment to commence the audit on April 5, 1994. (Tab 9, Document Book)

14. On March 30, 1994, the Examiner telephoned the Solicitor to confirm the appointment scheduled for April 5, 1994. The Solicitor confirmed the appointment and stated that he would contact the Examiner on the following day with an address to conduct the audit. (Tab 10, Document Book)

15. On March 31, 1994, the Examiner left a message on the Solicitor's answering machine, asking for him to contact her with an address for the audit. The Solicitor did not respond to the call. (Tab 11, Document Book)

16. On or about April 5, 1994, the Examiner sent a letter to the Solicitor dated April 5, 1995, advising him that if his books and records were not delivered to the Law Society on or before April 15, 1994, the matter would be referred to the Discipline Committee for action. The Solicitor did not respond to this letter and advises that it was never received. (Tab 12, Document Book)

17. In August 1994, the Law Society was advised by the Solicitor and his accountant that his books and records were taken by his former bookkeeper in or about January 1994 who refused to return them to him. The issue of the termination of the bookkeeper was taken to mediation. Through the mediation, the former bookkeeper returned books and records to the Solicitor in September 1994; however, the majority of the Solicitor's documents were not returned to him until late November 1994.

18. On December 22, 1994, the Solicitor produced the following to the Law Society:

- a. Trust cash receipts journal;
- b. Trust cash disbursement journal;
- c. Clients' trust ledger accounts;
- d. General cash receipts journal;
- e. General cash disbursement journal;
- f. Fees journal or copies of billings;
- g. Trust bank statements and cashed cheques;
- h. Trust deposit books;
- i. General bank statements and cashed cheques;
- j. General deposit books; and

26th September, 1996

k. Trust bank reconciliations and trust listings.

19. By letter dated January 5, 1995, the Law Society's Examiner advised the Solicitor that to continue with her investigation certain materials were required, these included certain client files and accounting records with respect to estate files. (Tab 13, Document Book)

20. To date, the Solicitor has not produced the following:

- a. Passbooks and/or statements for all estate accounts;
- b. Deposit books, journals and returned cheques for all estate accounts;
- c. File for client, Digital Lab;
- d. File for client, Rivalda;
- e. File for client, Giles Tool;
- f. File for client, Sendro;
- g. File for clients, Ken and Marie Thompson;
- h. File for clients, John Charles Hardinge;
- i. File for clients, David and Colleen Sparks; and
- j. File for client, G.B. Giles Estate.

21. On January 9, 1995, the Solicitor met with the Society's Examiner and advised, *inter alia*, that certain clients had asked that the Solicitor not produce their files to the Society. By letter dated January 10, 1995, the Law Society confirmed the meeting of January 9, 1995 and outlined the files which it required to continue the audit. The Solicitor did not respond to this letter. (Tab 14, Document Book)

22. By letter dated February 7, 1995, the Law Society's Examiner requested a response to her letter of January 10, 1995. (Tab 15, Document Book)

23. By letter dated February 14, 1995, in response to a voice mail message from the Solicitor of that date, the Law Society outlined its position regarding the necessity to review client files as a necessary part of its audit. (Tab 16, Document Book)

24. By letter dated February 14, 1995 to Ms. Campbell, the Solicitor confirmed his voice mail message by advising, *inter alia*, that with respect to the client files referred to in paragraph 20 herein:

- a. Digital Specialty Chemicals Limited is a company of which the Solicitor is the President. The Solicitor and his wife's estate funded certain equipment acquisitions, and put the funds through the Solicitor's trust account. The Solicitor advised that he would not be producing the file for this company.
- b. Rivalda is a property of which the Solicitor owns the equity of redemption. The Solicitor indicated that he would not be producing the file for this property.
- c. Giles Tool Agencies Limited is a company of which the Solicitor's brother, George Giles, is the owner and President and the Solicitor is the Secretary-Treasurer.
- d. The Solicitor asked clients George and Clara Sendro to contact the Society.
- e. Ken and Marion Thompson are clients and family friends of the Solicitor. The Solicitor believed they are currently in Florida and was attempting to contact them.

- f. John Charles Hardinge was the father of the Solicitor's sister in law, Ms. Eva Frederika Giles. The Solicitor provided Ms. Giles' address.
 - g. David and Colleen Sparks are the daughter and son-in-law of the Solicitor's brother, George Giles. The Solicitor provided their address. (Tab 17, Document Book)
25. By letter dated February 14, 1995 to Ms. Devlin of the Law Society, the Solicitor advised that, *inter alia*, he would provide the file with respect to the Bachner estate once he had distributed funds to the beneficiary of that estate. (Tab 18, Document Book)
26. The Law Society received a letter from the client, Sendro Enterprises Limited dated February 19, 1995, in which that company advised, *inter alia*, that it would not consent to the disclosure of its files to the Law Society. (Tab 19, Document Book)
27. By letter dated February 21, 1995, the Law Society confirmed the files and records which had not been produced as of February 21, 1995. (Tab 20, Document Book)
28. On February 27, 1995, the Solicitor delivered his file with respect to the Bachner estate to the Law Society.
29. On June 26, 1995, the Society received a letter from the Solicitor relating to the outstanding matters. A copy of the letter is annexed hereto as Exhibit "A".
30. By letter dated June 27, 1995, the Society sent a letter to the Solicitor outlining the outstanding matters and, in particular, the files which had not been produced. A copy of the letter is annexed hereto as Exhibit "B".
31. The Society received letters dated July 17, 1995 from Mrs. Eva Giles and George B. Giles, copies of which are annexed hereto as Exhibits "C" and "D" respectively.

V. DISCIPLINE HISTORY

32. The Solicitor does not have a discipline history.

DATED at Toronto, this 18th day of July, 1995."

The Committee heard evidence from the Solicitor regarding a disagreement with a former employee and the subsequent loss of certain records and books. The Committee was not convinced however that these problems were the sole source of the Solicitor's not fulfilling his promises and undertakings. We found his explanation regarding the Bachner estate unconvincing.

The Society's primary witness Ms. Campbell impressed us as forthright and candid. She indicated that the Solicitor had not initially cooperated fully with the Society but that she was satisfied that his most latterly efforts were sincere. We accept this evidence. Nevertheless, the Committee has found that the evidence establishes that the Solicitor failed to cooperate with the Law Society's representative as alleged.

FINDING

Accordingly, on all of the evidence the Committee finds the Solicitor guilty of the Complaint.

26th September, 1996

RECOMMENDATION AS TO PENALTY

The Committee recommends that William Henry Giles be suspended for one month and indefinitely thereafter until he has complied with the request set out in the letter from Ms. Lorraine Campbell to him, dated April 5th, 1994 found at tab 12 of exhibit number 3, and pays costs in the amount of \$2,000.

REASONS FOR RECOMMENDATION

The reasons for penalty are briefly this. The investigation of the Society auditor revealed that there was a number of outstanding matters, some of which were rather minor; one in particular relating to the Bachner estate, revealed accounting in the nature of \$33,000 worth of fees where the estate did not appear to be a complicated one and it appeared to have a total value of about \$70,000. No account has ever been provided to the Law Society setting out the services provided by the Solicitor.

To date, there has been no production as requested in the letter of April 5th, particularly item 8 in that letter, 'current fees book and/or chronological file of billings'. Item 13, 'passbooks and/or statements for all estate accounts and separate trust bank accounts (if applicable)' and item 14, 'deposit books, journals and returned cheques for all estate bank accounts and separate accounts (if applicable)'.

This is, in the view of the Committee, a serious matter that required full cooperation in order for the Law Society to have carried out its mandate for the protection of the public. The question of the \$30,000 fee and what, if anything, was done to earn the fee remains a serious concern.

Our decision does not, in any way, relate to the undertaking that was entered into in August of 1995 and does not relate to the conduct of the Solicitor in his dealings with the Society after he gave the undertaking.

William Henry Giles was called to the Bar on June 28, 1956.

ALL OF WHICH is respectfully submitted

DATED this 28th day of June, 1996

Thomas J. Carey, Chair

Mr. Perrier advised of the following corrections:

- the Discipline hearing took place on August 15th, 1995-counsel for the Society was Janet Brooks, November 23rd, 1995 and March 22nd, 1996
- page 1, 2nd paragraph, 2nd sentence - should read:
"The Solicitor was present on August 15th, 1995 and was not present on November 23rd, 1995 and March 22nd, 1996 and was not represented by counsel."

There were no submissions, the finding was confirmed and the Report adopted.

26th September, 1996

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 month and indefinitely thereafter until he complied with the request set out in a letter dated April 5th, 1994 and pay costs in the amount of \$2,000.

There were brief submissions by Mr. Perrier in support of the recommended penalty.

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

Carried

Re: Robert Allan LEVINE - Vaughan

The Secretary placed the matter before Convocation.

Messrs. MacKenzie and Adams and Ms. Curtis withdrew for this matter.

Ms. Jane Ratchford appeared for the Society. The solicitor appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 12th August, 1996, together with an Affidavit of Service sworn 21st August, 1996 by Ron Hoppie that he had effected service on the solicitor by registered mail on 15th August, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 12th September, 1996 (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

Gavin MacKenzie, Chair
Michael Adams
Bradley Wright

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

Jane Ratchford
for the Society

ROBERT ALLAN LEVINE
of the City
of Vaughan
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 18, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 22, 1996 Complaint D98/96 was issued against Robert Allan Levine alleging that he was guilty of professional misconduct.

The matter was heard in public on June 18, 1996 before a Discipline Hearing Panel composed of Gavin MacKenzie (Chair), Michael Adams, and Bradley Wright. The Solicitor was in attendance. He was not represented by counsel. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D98/96

- b) during the period of August 1992 to October 1993, he operated his general account transactions through his mixed trust account in contravention of Section 14 of Regulation 708; and
- c) during the period August 1992 to November 1993, he drew funds from trust on account of fees and disbursements, by trust cheques made payable to a management company in contravention of Section 14(9) of Regulation 708.

For the reasons developed below, the Panel found that Particular (a) was not made out. Particular (a) reads as follows:

- a) he breached an Order of Convocation that he suspend his practice for failure to pay his annual fees by continuing to practice during the period of March 6, 1992 to April 20, 1992;

REASONS

The Discipline Hearing Panel received as Exhibit 2 the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

- 1. The Solicitor admits service of Complaint D98/96 and is prepared to proceed with a hearing of this matter on June 18 and 19, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

- 3. The Solicitor has reviewed Complaint D98/96 and admits the particulars contained therein. The Solicitor further admits that particulars (b) and (c) constitute professional misconduct. He does not admit that particular (a) constitutes professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in April, 1978. During the time material to this complaint, the Solicitor operated a general law practice with an emphasis on civil litigation.

5. On November 8, 1993, the Solicitor made an assignment into bankruptcy. He was duly discharged in August, 1994. The Solicitor's Statement of Affairs filed in the bankruptcy is found at Tab 55 of the Document Book.

6. The within complaint resulted from an audit that was commenced by the Law Society on June 6, 1994 and completed on October 13, 1994.

Particular 2(a) He breached an Order of Convocation that he suspend his practice for failure to pay his annual fees by continue to practise during the period of March 6, 1992 to April 20, 1992

7. On August 2, 1991, the Law Society sent the first notice of annual fees due by the Solicitor for the period July 1, 1991 - June 30, 1992 by regular mail at the address contained in the Law Society's records for the Solicitor (Document Book, Tab 1).

8. On November 8, 1991, the Law Society sent the second notice of annual fees due by the Solicitor for the period July 1, 1991 - June 30, 1992 by regular mail at the address contained in the Law Society's records for the Solicitor (Document Book, Tab 2).

9. On January 9, 1992, the third notice of annual fees due was sent to the Solicitor for the period July 1, 1991 - June 30, 1992 by regular mail at the address contained in the Law Society's records for the Solicitor (Document Book, Tab 3).

10. On February 18, 1992, the fourth and final notice of annual fees due for the period July 1, 1991 - June 30, 1992 was sent to the Solicitor by regular mail at the address contained in the Law Society's records for the Solicitor (Document Book, Tab 4).

11. The Solicitor does recall receiving at least some of the above notices.

12. On March 2, 1992, a letter was sent to the Solicitor by registered mail advising him that his rights and privileges had been suspended effective March 6, 1992 due to non-payment of annual fees (Document Book, Tab 5). There is no record of delivery of the letter.

13. The Solicitor does not recall the suspension Order being brought to his attention until a day or two prior to the actual payment of his annual fees and reinstatement on April 21, 1992, when he telephoned the Law Society on an unrelated matter.

14. The Law Society audit disclosed that the Solicitor practised during the period of suspension, namely March 6, 1992 to April 20, 1992 as follows:

Date	Details
March 6, 1992	Solicitor sent a letter to client, Frank Crudo; (Document Book - Tab 6)
March 6, 1992	Solicitor sent a letter to Dominion of Canada regarding his client Gordon Phillips; (Document Book - Tab 7)
March 11, 1992	Solicitor sent a letter to Gary Davis "Turbo et al v. Bank of Nova Scotia" (Document Book - Tab 8)
March 11, 1992	Solicitor sent a letter to Borden & Elliot re: Turbo et al v Bank of Nova Scotia; (Document Book - Tab 9)
March 11, 1992	Solicitor sent a letter to Genesee, Genesee, Camporese & Clarke - Re: Magee and Burlington Insurance; (Document Book - Tab 10)
March 13, 1992	Solicitor sent a letter and attachments to Mr. Ho Sun Kim re: Kim Transfer of 13164 Yonge Street in Trust; (Document Book - Tab 11)
March 13, 1994	Solicitor sent letter to Dominion of Canada regarding Scott Dale; (Document Book - Tab 12)
March 17, 1992	Solicitor sent a letter to Mr. Gary Davis regarding ongoing matter; (Document Book - Tab 13)
March 18, 1994	Solicitor sent a letter to Genesee, Genesee & Camporese regarding ongoing matter; (Document Book - Tab 14)
March 20, 1992	Solicitor sent a letter to Bayshore Trust Company regarding "Estate of Izzie Goodman" (Document Book - Tab 15)
March 20, 1992	Solicitor sent a letter to Sunlife Trust Company regarding "Estate of Izzie Goodman" (Document Book - Tab 16)
March 20, 1992	Solicitor sent a letter to National Trust Company regarding "Estate of Izzie Goodman; (Document Book - Tab 17)
March 20, 1992	Solicitor sent a letter to Smith, Lyons, Torrance, Stevenson & Mayers regarding "Magee et al v CIBC et al; (Document Book - Tab 18)
March 23, 1992	Solicitor sent a letter to Borden & Elliot re: Turbo et al v Bank of Nova Scotia; (Document Book - Tab 19)
March 23, 1992	Solicitor sent a letter to Frank Crudo re: Crudo ATS Crudo; (Document Book - Tab 20)
March 24, 1992	Solicitor sent a letter to Genesee, Genesee & Camporese re: Magee ET AL V CIBC ET AL; (Document Book - Tab 21)

Date	Details
March 24, 1992	Solicitor sent a letter to Royal Bank of Canada re: Estate of Goodman; (Document Book - Tab 22)
March 24, 1992	Solicitor sent a letter to Kraft, Rothman, Berger, Grill Chartered Accountants re: Goodman Estate (Attention: Harry March) (Document Book - Tab 23)
March 26, 1992	Solicitor sent a letter to Swartz & Associates re: Crudo and Crudo; (Document Book - Tab 24)
March 27, 1992	Solicitor sent a letter to Kraft, Rothman, . . . , regarding Estate of Izzie Goodman; (Document Book - Tab 25)
March 27, 1992	Solicitor sent a letter to Ms. Harriette Zive; (Document Book - Tab 26)
March 29, 1992	Solicitor sent a letter to Ms. Harriette Zive re "Estate of Izzie Goodman"; (Document Book - Tab 27)
March 29, 1992	Solicitor sent a letter to Ms. Marcy Mayzel re Goodman Estate; (Document Book - Tab 28)
March 30, 1992	Solicitor sent a letter to Swartz & Associates re: Crudo v Crudo; (Document Book - Tab 29)
March 30, 1992	Solicitor sent a letter to Ontario Court (Estate Div.) re: Goodman estate; (Document Book - Tab 30)
March 31, 1992	Solicitor sent a letter to Smith, Lyons, Torrance, Stevenson & Mayers: attention David Goodman re: Magee ET AL V CIBC ET AL; (Document Book - Tab 31)
April 1, 1992	Solicitor sent a letter to Borden & Elliot; Attention: Martin Scisizzi; (Document Book - Tab 32)
April 1, 1992	Solicitor sent a letter to Harvey A. Swartz re: Crudo V Crudo; (Document Book - Tab 33)
April 1, 1992	Solicitor sent a letter to Gary Davis re: Turbo ET AL ATS Bank of Nova Scotia; (Document Book - Tab 34)
April 3, 1992	Solicitor sent a letter re: Magee ET AL V TRIPEMCO ET AL; attention: Arthur Camporese; (Document Book - Tab 35)
April 6, 1992	Solicitor sent a letter to Smith, Lyons, , Attention: David J. Goodman; (Document Book - Tab 36)
April 6, 1992	Solicitor sent a letter to Harvey Swartz, re: Crudo v Crudo; (Document Book - Tab 37)
April 6, 1992	Solicitor sent a letter to Borden & Elliot: re: Turbo ET AL V Bank of Nova Scotia; (Document Book - Tab 38)

Date	Details
April 8, 1992	Solicitor sent a letter re: Magee ET AL V Burlington Insurance; attention: Arthur Camporese; (Document Book - Tab 39)
April 8, 1992	Solicitor sent a letter to Dominion of Canada, re: Gordon Phillips; (Document Book - Tab 40)
April 9, 1992	Solicitor sent a letter to Harvey Swartz re: Crudo v Crudo; (Document Book - Tab 41)
April 10, 1992	Solicitor sent a letter to Martin Scilisizzi re: Turbo Express; (Document Book - Tab 42)
April 13, 1992	Solicitor sent a letter attention Arthur Camporese re: Magee V Burlington; (Document Book - Tab 43)
April 14, 1992	Solicitor sent a letter to Genesee, Genesee...., re: Magee et al v Burlington Insurance; (Document Book - Tab 44)
April 15, 1992	"Full and Final Release" executed by client, Gordon Phillips and witnessed by member - fax record indicates date transmitted to other party as April 15th; (Document Book - Tab 45)
April 15, 1992	Solicitor sent a letter to "The Dominion of Canada: re Gordon Phillips; (Document Book - Tab 46)
April 20, 1992	Solicitor sent a letter to Harvey Swartz re: Crudo v Crudo; (Document Book - Tab 47)
March & April, 1992	Solicitor's docket regarding Estate of Izzie Goodman, details work throughout the suspension period; (Document Book - Tab 48)
March & April, 1992	Numerous trust cheques indicate trust disbursements throughout the suspension period; (Document Book - Tab 49)
March 6, to 31, 1992	The client trust ledger for "Kim Purchase" indicated trust disbursements regarding the noted matter being made during the referenced suspension period. (Document Book - Tab 50)
April 15, & 16, 1992	The Solicitor's trust account deposit book detailed deposits to trust during suspension period; (Document Book - Tab 51)
March 17, 1992	The trust ledger statement for Turbo Express documented receipt of trust monies during suspension period; (Document Book - Tab 52)

15. On April 21, 1992, the Solicitor paid his annual fee and was reinstated to practise.

Particular 2(b) During the period of August 1992 to October 1993, he operated his general account transactions through his mixed trust account in contravention of Section 14 of Regulation 708

26th September, 1996

16. On June 29, 1992, a company was formed with the Solicitor's wife as the Director and registered as 992722 Ontario Limited (Document Book, Tab 58). The Solicitor advised the Law Society auditor investigating his books and records that this was to be a management company for his practice.

17. On August 17, 1992, the name SJSD Paralegal and Management Services was registered for the company (Document Book, Tab 60). The activity to be carried on by the company was described as paralegal and management services. The company shall hereinafter be referred to as "the management company".

18. The management company operated a trust account, number 311219, at the Bank of Nova Scotia, 845 Finch Avenue West in North York. A ledger in the name "Robert A. Levine Practice" was maintained by the Solicitor for this account commencing July 31, 1992. The Solicitor advised the auditor that this ledger was to be used to support the bank account for the management company and was not to be part of his "trust" accounting (Document Book, Tab 61).

19. The Solicitor's mixed trust account, in the name "Robert Levine in trust" was also operated from this same bank branch, account number 95-12. A client ledger was maintained for this account in the name of the Solicitor's wife, "S. Levine - SJSD Paralegal & Management Services" (Document Book, Tab 59). The Solicitor advised the auditor that there was to be a one time only usage of this client ledger, that being to hold trust funds to pay disbursements for the registration of the management company.

20. Upon conducting a detailed analysis of the client ledger of the management company and comparing it to the source documents (deposit books, cashed cheques, bank statements, and trust reconciliations), the auditor found various discrepancies which resulted in the findings set out below.

21. During the period of August 1992 to October 1993, it was an on-going practice for the Solicitor to deposit personal funds to the mixed trust account. Some of the deposits were noted as "Capital Contributions". Others were the Solicitor's GST refunds. There were other deposits with various explanations, all of which should have been deposited to a general account. After these funds were deposited to the mixed trust account, they were transferred to the management company account via trust cheque.

22. Details of the transactions in question are as follows:

Date	Amount	Receipts	Disbursements
Aug. 21, 1992	\$1,500.00		Noted as "capital contribution to RAL practice" Transferred to Management company as a transfer from mixed trust; (Document Book - Tab 62)

Date	Amount	Receipts	Disbursements
Sept. 11, 1992	400.00	Entered on Levine trust ledger; Noted as Capital Contribution; Deposited to mixed trust account; (Document Book - Tab 63)	
Sept. 30, 1992	340.00	Entered on Levine trust ledger; Noted as Capital Contribution; Deposited to Mixed Trust; (Document Book - Tab 64)	
Jan. 26, 1993	390.88		Cheque #1114 from mixed trust payable to Continental Canada Re: Sivi Levine Insurance; (Document Book - Tab 65)
Jun. 25, 1993	685.30	Noted as a GST refund of the Solicitor; Deposited to the mixed trust account; (Document Book - Tab 66)	Cheque #1181 from mixed trust bank account to management company bank account; (Document Book - Tab 69)
Jun. 30, 1993	1,036.85	Noted as a GST refund of the Solicitor; Deposited to the mixed trust account; (Document Book - Tab 68)	Cheque #1182 from mixed trust bank account to management company bank account; (Document Book - Tab 69)
Jul. 2, 1993	472.40	Noted as GST refund of the Solicitor; Deposited to mixed trust bank account; (Document Book - Tab 70)	Cheque #1183 from mixed trust bank account to management company bank account; (Document Book - Tab 71)

Date	Amount	Receipts	Disbursements
Jul. 22, 1993	200.00	Noted as a Capital Contribution; Deposited to mixed trust bank account; (Document Book - Tab 72)	Cheque #1189 from mixed trust bank account to management company bank account; (Document Book - Tab 73)
Jul. 31, 1992	2,843.27	From Management Company to mixed trust account; Notation: "to balance trust" (Document Book - Tab 74)	
Jul. 31, 1992	300.00	Noted as "Cash from Miscellaneous RAL Cap. Contribution". Deposited to mixed trust bank account. (Document Book - Tab 74)	
Oct. 1, 1993	560.00	Noted as a capital contribution; Deposited to mixed trust account; (Document Book - Tab 75)	
Oct. 7, 1993	300.00	Noted on copy of bank statement as "personal deposit"; Deposited to mixed trust; (Document Book - Tab 76)	

23. It is the Solicitor's position that he was not aware that the usage of the trust account was a co-mingling of general office funds and trust funds. Further, the Solicitor's accountant did not advise the Solicitor of this fact notwithstanding that his accountant reviewed his trust ledgers for the purpose of preparing the Solicitor's Forms 2 and 3 for 1993. However, after explanation by the Auditor for the Society in 1994, the Solicitor understood that this was a co-mingling of general and trust funds. In consequence, the Solicitor now admits that the above usage of the trust account constitutes a breach of Section 14 of Regulation 708.

Particular 2(c) During the period August 1992 to November 1993, he drew funds from trust on account of fees and disbursements, by trust cheques made payable to a management company in contravention of section 14(9) of Regulation 708

24. When fees were earned from a client, the funds were transferred from the ledger of the client in question to the client ledger in the name S. Levine - SJSD Paralegal & Management Services. They were then disbursed by way of cheques payable to the management company and deposited into the management company account. The specifics of this usage are as follows:

Date	Amount	Details
August 12, 1992	\$1,500.00	Deposit to management company from mixed trust account; Noted as re: Crudo fees (Document Book - Tab 77)
August 20, 1992	\$ 500.00 750.00 <u>\$1,250.00</u>	Deposit to management company from mixed trust account; Noted as earned fees from Visentin & #1386 (name illegible), respectively; (Document Book - Tab 78)
August 21, 1992	\$1,500.00	Deposit to management company from mixed trust account coming from Sivi Levine client ledger; (Document Book - Tab 62)
September 4, 1992	\$ 792.04	Deposit to management company from mixed trust account noted as re: Babins mortgage; (Document Book - Tab 79)
September 11, 1992	\$ 689.72 450.00 200.00 <u>\$1,339.72</u>	Transfers from mixed trust to management company; Re: Browne - earned fees; Sivi Levine "Capital Contribution"; Design Diffusions - earned fees; - respectively; (Document Book - Tab 80)
September 18, 1992	\$ 200.00 300.00 <u>\$ 500.00</u>	Transfers from mixed trust to management company; re: Zoffraneri - earned fees; Rapini - earned fees; - respectively; (Document Book - Tab 81)
September 22, 1992	\$ 100.00 380.00 <u>\$ 480.00</u>	Transfers from mixed trust to management company; re: Dutchess Sales Ltd. - earned fees; Royal Building - earned fees; - respectively; (Document Book - Tab 82)
September 25, 1992	\$1,700.00	Transfer from mixed trust to management company re: MacIntyre fees; (Document Book - Tab 83)
February 9, 1993	\$ 275.00	Cheque #1121 from mixed trust payable to management company; (Document Book - Tab 84)

Date	Amount	Details
February 12, 1993	\$ 685.00	Trust cheque #1123 to management company; (Document Book - Tab 85)
February 26, 1993	\$1,400.00	Noted as a transfer from "Ouellette" client ledger and entered on the Sivi Levine client ledger; (Document Book - Tab 59) Although a deposit slip for this transaction was not located however based on other transactions of this nature in the Solicitor's records, it would appear that these funds were transferred to management company by a cheque and then Cheque #432 was written from SJSD Paralegal & Management Services bank account to Sivi Levine and noted as a drawing; (Document Book - Tab 86)
June 25, 1993	\$ 685.30	Cheque #1181 from mixed trust bank account to management company bank account; (Document Book - Tab 67) Noted as a GST refund of the Solicitor when originally deposited to mixed trust;
June 30, 1993	\$1,036.85	Cheque #1182 from mixed trust bank account to management company bank account; (Document Book - Tab 69) Noted as a GST refund of the Solicitor when originally deposited to mixed trust;
July 2, 1993	\$ 472.40 400.00 \$ 872.40	Cheque #1183 from mixed trust bank account to management company bank account; \$472.40 noted as GST refund of the Solicitor when originally deposited to mixed trust, balance fees and/or disbursements; (Document Book - Tab 71)
July 22, 1993	\$ 200.00	Cheque #1189 from mixed trust bank account to management company bank account; (Document Book - Tab 73) Noted as a capital contribution when originally deposited to mixed trust;
August 17, 1993	\$ 125.00	Cheque #1197 from mixed trust bank account to management company; (Document Book - Tab 87)

Date	Amount	Details
August 17, 1993	\$ 30.00	Cheque #1198 from mixed trust payable to "Streetwise Legal Inc." (Document Book - Tab 88) (this company is a division of the management company)
October 1, 1993	\$ 160.00	Cheque #1273 from mixed trust bank account payable to management company; client reference "Ferris"; (Document Book - Tab 59 & Tab 76)
October 8, 1993	\$ 300.00	Cheque #1202 from mixed trust bank account payable to management company; client reference "Ferris" (Document Book - Tab 59 & Tab 76)
October 8, 1993	\$ 100.00	Cheque #1201 from mixed trust payable to management company; client reference "Ferris"; (Document Book - Tab 59 & 76)
November 1, 1993	\$ 525.00	Cheque #1211 from mixed trust account payable to management company; (Document Book - Tab 59 & Tab 89)

25. It is the Solicitor's position that he did not put his mind to or understand that the above practice was a breach of section 14(9) of Regulation 708, and it was not brought to his attention by his accountant who prepared, among other things, the Solicitor's income tax return for 1992, and pre-bankruptcy return for 1993. The Solicitor was made aware that the above practice constituted a breach of section 14(9) of Regulation 708 by the Society's auditor in 1994.

Consequently, the Solicitor now admits that the above practice constituted a breach of section 14(9) of Regulation 708, which states, "money drawn from a trust account must be drawn by cheque in favour of the member or by a transfer to a bank account which is in the name of the member and is not a trust account."

V. PRIOR DISCIPLINE

26. The Solicitor has no prior discipline.

DATED at Toronto, this 18th day of June, 1996."

The Solicitor testified in relation to Particular (a). His evidence was that though he received one or more notices informing him that Convocation "may" order that his rights and privileges as a member be suspended if his fees were not paid within four months after the day on which payment was due, he did not receive actual notice that his rights and privileges as a member had in fact been suspended until a day or two prior to April 21, 1992 when his fees were paid and his rights and privileges reinstated.

26th September, 1996

The Solicitor explained that his office had encountered a number of instances of the non-delivery of mail in late 1991 and early 1992, perhaps occasioned in part by the facts that another tenant moved from the same floor of the building on which the Solicitor practised, and perhaps occasioned in part by the Solicitor's own move to another floor of the same building.

In argument, Ms. Ratchford relied upon the *MacGregor* case, in which a member was found guilty of practising while under suspension in spite of the fact that it was not established that he had received actual notice of Convocation's suspension of his rights and privileges. In the *MacGregor* case, in addition to receiving the usual notices of the possibility of his suspension if he did not pay his fees, the member had been notified that a registered letter was at the post office for him to be picked up, yet he did not take delivery of it. The letter contained a notice that Convocation had suspended his rights and privileges.

In the present case, as disclosed in Paragraph 12 of the Agreed Statement of Facts, a letter was sent to the Solicitor by registered mail informing him that his rights and privileges had been suspended effective March 6, 1992, due to his non-payment of annual fees. There is no record of delivery of the letter; nor was the Law Society able to establish that the Solicitor was notified that a registered letter was available to be picked up.

On the evidence, the Panel was not satisfied to the necessary degree of certainty that the Solicitor had received actual notice of the suspension of his rights and privileges; nor was the Committee satisfied that the Solicitor was either reckless or wilfully blind to the likelihood that his rights and privileges had been suspended, as was the member in the *MacGregor* case.

The Panel accordingly found that Particular (a) had not been made out.

However, based upon the admissions contained in the Agreed Statement of Facts, the Panel found that Particulars (b) and © of Complaint D98/96 had been established.

RECOMMENDATION AS TO PENALTY

The Panel recommends that the solicitor be reprimanded in Convocation and ordered to pay the Society's costs fixed at \$1,000.

REASONS FOR RECOMMENDATION

Ms. Ratchford brought to the Panel's attention the report of the Discipline Hearing Panel in the *Donohue* case. In that case, the member was found guilty of improperly drawing money from his trust account in contravention of Section 14 of Regulation 708 under *The Law Society Act*, by processing general account transactions through his trust account for the purpose of avoiding creditors.

In spite of the fact that Mr. Donohue was a very senior member of the bar who had never been disciplined previously, the Discipline Hearing Panel recommended that he be reprimanded in Convocation and required to pay the costs of the Society.

In its reasons for its recommendation, the Panel stated as follows:

"A solicitor's trust account is a matter of trust between the solicitor and his clients. It is something which is not to be misused in any way for the benefit of the solicitor and the detriment of anyone else with whom he or she deals."

26th September, 1996

We are mindful of the fact that in the present case, the Society did not allege in the complaint that the Solicitor's purpose in depositing personal funds to his mixed trust account, and in processing general account transactions through his mixed trust account, was to avoid creditors, as was the case in *Donohue*.

The Solicitor has been found guilty, however, not only of processing general account transactions through his mixed trust account in contravention of Section 14 of Regulation 708, but also of drawing funds from trust on account of fees and disbursements by trust cheques made payable to a management company in contravention of Section 14(9) of Regulation 708.

Moreover, the Panel is of the view that just as the Panel in the *Donohue* case considered it to be important that Convocation bring home both to the Solicitor and to the profession the importance of solicitors' trust accounts not being used except to hold funds in trust for clients, the Panel in the present case considers it important that that message be brought home again not only to the Solicitor but to the profession as a whole. There are good reasons for the requirements of the regulation that clients' funds and solicitors' funds not be commingled, and that trust accounts neither contain solicitors' funds nor be used to pay personal or practice expenses of solicitors.

We accordingly recommend that the Solicitor be reprimanded in Convocation and ordered to pay the Society's costs fixed at \$1,000.

Robert Allan Levine was called to the Bar and admitted as a solicitor of the Supreme Court of Ontario on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED AT TORONTO this 12th day of August, 1996

Gavin MacKenzie, Chair

There were no submissions, the finding was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation and pay the Society's costs in the amount of \$1,000.

The solicitor supported the recommended penalty but requested that he be given 6 months to pay costs.

Counsel for the Society did not oppose the request.

It was moved by Ms. Sealy, seconded by Mr. Wilson that the solicitor be reprimanded in Convocation and pay the Society's costs in the amount of \$1,000 within 6 months.

Carried

The Treasurer administered the reprimand.

Re: Richard LLEWELLYN - Pembroke

The Secretary placed the matter before Convocation.

26th September, 1996

Messrs. Wilson, Bobesich and Crowe withdrew for this matter.

Ms. Janet Brooks 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 14th March, 1996, together with the Affidavit of Service addressed to the solicitor at 22 Pembroke Street East, Pembroke sworn 22nd August, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th August, 1996 (marked Exhibit 1), together with the Report and Affidavit of Service addressed to the solicitor at 22 North Street, Killaloe sworn 22nd August, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th August, 1996 (marked Exhibit 2), together with the Report and Affidavit of Service sworn 20th May, 1996 by David Munro, Process Server (marked Exhibit 3), together with the Report and Affidavit of Service addressed to the solicitor at 27 North Street, Killaloe sworn 23rd April, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 19th April, 1996 (marked Exhibit 4), together with the Report and Affidavit of Service addressed to the solicitor at 220 Pembroke Street East, Pembroke sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 20th March, 1996 (marked Exhibit 5). 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

Richmond C. E. Wilson, Q.C. Chair
Marshall A. Crowe
Gordon Z. Bobesich

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

Allan Maclure
for the Society

RICHARD LLEWELLYN
of the City
of Pembroke
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 30, 1995, Complaint D305/95 was issued against Richard Llewellyn alleging that he was guilty of professional misconduct.

26th September, 1996

The matter was heard in public on December 13, 1995 before this Committee composed of Richmond C.E. Wilson, Q.C., Chair, Marshall A. Crowe and Gordon Z. Bobesich. The Solicitor was not present at the hearing nor was he represented. Allan Maclure appeared on behalf of the Law Society.

DECISION

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

Complaint D305/95

2. a) he failed to file with the Society within six months of the termination of his fiscal year ending October 31, 1994, 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

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D305/95 and is prepared to proceed with a hearing of this matter on December 12, and 13, 1995.

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 D305/95 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 March 20, 1975. He practices as a sole practitioner.
5. The Solicitor's fiscal year end is October 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending October 31, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.
6. A Notice of Default in Annual Filing, dated May 8, 1995 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to the Agreed Statement of Facts.

26th September, 1996

7. By registered mail, the Law society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated June 12, 1995. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on June 16, 1995. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to the Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on June 26, 1995.

9. A Law Society staff employee spoke with the Solicitor by telephone on August 11, 1995. The Solicitor advised that he was having a difficult year financially and that he did not have the funds to pay his accountant. The Solicitor was granted a thirty day extension to provide the outstanding filing. A copy of the Law Society's handwritten telephone transaction form, dated August 11, 1995 is attached as Exhibit "C" to the Agreed Statement of Facts. The filing was not received.

10. A Law Society staff employee left a telephone message for the Solicitor at his office on October 10, 1995 requesting he return the call. A copy of the Law Society's handwritten telephone transaction form, dated October 10, 1995, is attached as Exhibit "D" to the Agreed Statement of Facts. The call was not returned.

11. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing, dated October 30, 1995. The Solicitor was advised that his name would go before Convocation on November 24, 1995 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on November 23, 1995. The Solicitor was reminded that the paying of the late filing fee would not relieve him from his obligation to make annual filings and that he may be brought before the Discipline Committee for failure to file. The Society's Third Notice was not claimed from the post office by the Solicitor. A copy of the Society's Third Notice is attached as Exhibit "E" to the Agreed Statement of Facts.

12. A Law Society staff employee left a telephone message for the Solicitor at his office on November 21, 1995 requesting he return the call. A copy of the Law Society's handwritten telephone form, dated November 21, 1995, is attached as Exhibit "F" to the Agreed Statement of Facts. The call was not returned.

13. The Solicitor has not provided the outstanding filing.

V. DISCIPLINE HISTORY

14. The Solicitor does not have a discipline history.

DATED at Toronto this 12th day of December, 1995."

26th September, 1996

RECOMMENDATION AS TO PENALTY

The Committee recommends that Richard Llewellyn be reprimanded in Convocation if his outstanding filings have been completed prior to the hearing of this matter in Convocation, failing which, the Solicitor be suspended for a one (1) month fixed period and month to month thereafter until his outstanding filings have been completed. Such suspension shall begin at the conclusion of any administrative suspension that the Solicitor may be under.

REASONS FOR RECOMMENDATION

By the agreed statement of facts the solicitor admits the complaint and the particulars contained therein and that they constitute professional misconduct.

Failure to file Form 2 or Form 3 within six months after the ending of a fiscal year, with no recent discipline history has, in the recent past resulted in the penalty as recommended here, and we see no reason in this case to depart from that standard.

Richard Llewellyn was called to the Bar on March 20, 1975.

ALL OF WHICH is respectfully submitted

DATED this 14th day of March, 1996

Richmond C.E. Wilson, Q.C., Chair

Ms. Brooks advised that the solicitor was served in accordance with the Act.

There were no submissions, the finding was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings were completed failing which the Solicitor be suspended for a period of 1 month fixed period and month to month thereafter until his filings were completed, such suspension to begin at the conclusion of any administrative suspension.

Ms. Brooks advised that the filings had not been completed and made submissions in support of the suspension.

It was moved by Mr. Marrocco, seconded by Ms. Eberts that the solicitor be suspended for a period of 1 month fixed period and month to month thereafter until the filings were completed, such suspension to begin at the conclusion of any administrative suspension.

Carried

Re: Jay Duncan ROWATT - North York

The Secretary placed the matter before Convocation.

Messrs. Wilson, Bobesich and Crowe withdrew for this matter.

26th September, 1996

Ms. Ratchford 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 9th May, 1996, together with the Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd May, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 20th September, 1996 (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

Richmond C. E. Wilson, Chair
Marshall A. Crowe
Gordon Z. Bobesich

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

Jane Ratchford
for the Society

JAY DUNCAN ROWATT
of the City
of North York
a barrister and solicitor

Not Represented
for the solicitor

Heard: December 13, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 23, 1990, Complaint D188/90 was issued, on October 2, 1991, Complaint D150/91 was issued, on August 10, 1993, Complaint D215/93 was issued and on May 29, 1995, Complaint D105/95 was issued against Jay Duncan Rowatt alleging that he was guilty of professional misconduct. All of the above complaints were withdrawn. Two Complaints were amended and issued on December 11, 1995 - D150a/91 and D105a/95.

The matter was heard in public on December 13, 1995 before this Committee composed of Richmond C. E. Wilson, Q.C., Chair, Marshall A. Crowe and Gordon Z. Bobesich. The Solicitor attended the hearing and was not represented. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D150a/91

- a) He failed to advise his client, Jae Lee, that a \$9,000 brokerage fee was paid out of funds advanced by Mr. Lee, on a refinancing of a property at 491 Silverthorne Ave. in Toronto, which fee was disbursed as follows: \$4,500 to Wall Street Financial Corp. (Canada) Inc., a company operated by the Solicitor, and \$4,500 to one Seamus Keown;
- b) He acted in a conflict of interest by acting for the vendor and the purchaser in relation to a real estate and refinancing transaction for 491 Silverthorne Avenue in Toronto, without the knowledge or consent of his mortgagor client, Mr. Lee;
- c) He failed to act in a conscientious, efficient and diligent manner by failing to send reporting letters to his client, Corneth Smith, on her transfer of title of 491 Silverthorne Avenue, Toronto, and to his client, Jae Lee, on the discharge of his \$40,000 mortgage and his \$28,000 mortgage investment.

Complaint D105a/95

- 2. (a) He misapplied client trust funds in the sum of \$25,000 from Mr. and Mrs. Konstantinidis, by paying these funds in error, to his clients, and Mr. and Mrs. Georgeadis;
- (b) He failed to act in a conscientious, efficient and diligent manner in relation to his clients, Mr. and Mrs. Konstantinidis, by:
 - i) failing to confirm instructions received from a third party with Mr. and Mrs. Konstantinidis in relation to the postponement of a mortgage on 137 Reeve Drive, Scarborough;
 - ii) failing to confirm instructions received from a third party with Mr. and Mrs. Konstantinidis in relation to the reinvestment of a mortgage on 11 Cornelia Court in Flamborough, Ontario into new mortgage investments;
 - iii) registering a discharge of Mr. and Mrs. Konstantinidis' \$26,000 mortgage on 67 Tambrook Drive, Township of Tiny, without taking steps ensure that the clients executed the document;
 - iv) registering a postponement of Mr. and Mrs. Konstantinidis' mortgage on 137 Reeve Drive, Scarborough without taking steps ensure that the clients executed the document;
- (c) He misapplied client trust funds in the sum of \$52,595.20 from his clients, Mr. and Mrs. Georgeadis, by disbursing the funds prior to obtaining agreed upon security for the funds;
- (d) He acted in a conflict of interest on the sale of a property located at 40 Victoria Crescent, Orillia by acting for the vendors and the mortgagees, Mr. and Mrs. Georgeadis, which mortgagees were members of a mortgage syndicate holding the mortgage on the property, in which the Solicitor was also an investor;
- (e) He failed to act in a conscientious, efficient and diligent manner by failing to send reporting letters to Mr. and Mrs. Georgeadis on the discharge of the collateral mortgages registered on title to 205 Shannon Street, Orillia and 40 Victoria Crescent, Orillia;

26th September, 1996

- (f) He preferred his own interests over the interest of his clients, Mr. and Mrs. Georgeadis, by paying himself \$15,224.85 from the sale proceeds of 40 Victoria Crescent, Orillia, on account of his \$20,000 interest in a \$140,000 mortgage held by Mr. and Mrs. Georgeadis without advising Mr. and Mrs. Georgeadis.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D150a/91 and D105a/95 and is prepared to proceed to hearing on December 12 and 13, 1995.

II. IN PUBLIC/IN CAMERA

2. The parties agreed 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 Complaints D150a/91 and D105a/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in April, 1978. From 1981 until approximately June, 1990, the Solicitor was a sole practitioner with a general practice which emphasized real estate and mortgage financing transactions in the latter years. He made an assignment in bankruptcy in June, 1990 and closed his office at that time. The Solicitor has not practised law since then. He received his discharge as a bankrupt in mid-1991. Since June 5, 1992, the Solicitor has been suspended for non-payment of his errors & omissions levy.

Complaint D105a/95 Particulars

Re: Gus and Magda Konstantinidis

- 2(a) He misapplied client trust funds in the sum of \$25,000 from Mr. and Mrs. Konstantinidis, by paying these funds in error, to his clients, Mr. and Mrs. Georgeadis;
- (b) He failed to act in a conscientious, efficient and diligent manner in relation his clients, Mr. and Mrs. Konstantinidis, by:
- i) failing to confirm instructions received from a third party with Mr. and Mrs. Konstantinidis in relation to the postponement of a mortgage on 137 Reeve Drive, Scarborough;
 - ii) failing to confirm instructions received from a third party with Mr. and Mrs. Konstantinidis in relation to the reinvestment of a mortgage on 11 Cornelia Court in Flamborough, Ontario into new mortgage investments;
 - iii) registering a discharge of Mr. and Mrs. Konstantinidis' \$26,000 mortgage on 67 Tambrook Drive, Township of Tiny, without taking steps ensure that the clients executed the document;

- iv) registering a postponement of Mr. and Mrs. Konstantinidis' mortgage on 137 Reeve Drive, Scarborough without taking steps ensure that the clients executed the document.

5. The Solicitor acted for clients, Gus and Magda Konstantinidis, on various mortgage investments from 1988 to 1990. The Solicitor was introduced to these clients by one Effi Banks. Most of the dealings the Solicitor had with the clients were through Ms. Banks.

6. In November, 1988, these clients obtained mortgage financing on their personal residence and provided the net proceeds of the financing, \$175,000 to the Solicitor to invest in various mortgages.

7. The Solicitor invested the \$175,000 in five mortgages as follows:

1. \$14,000 mortgage to Robert and Angie James on 21 Guildhall Drive, Scarborough (this mortgage is not the subject matter of this complaint)
2. \$41,000 in a \$88,000 mortgage to Peter Wai on 137 Reeve Drive, Markham, Ontario
3. \$54,000 mortgage to Victor and Lupe Cordova on 175 Macedonia Court, Mississauga (this mortgage was repaid in full and is not the subject matter of this complaint)
4. \$26,000 mortgage to Robert Hostler on lot 110, plan 776, Township of Tiny, and on 67 Tambrook Drive, Scarborough
5. \$40,000 mortgage to Fransceso and Maria Izabeta on 11 Cornelia Court.

137 Reeve Drive, Markham

8. On November 9, 1988, the Solicitor registered a mortgage (the "Konstantinidis mortgage") in the amount of \$88,000 in favour of Mr. and Mrs. Konstantinidis on this property (Document Book, Tabs 1 and 2). The Solicitor advanced \$41,000 of the funds belonging to Mr. and Mrs. Konstantinidis to the owners of the property for purposes of renovations.

9. In 1989, the Konstantinidis mortgage changed priority several times and was ultimately postponed on December 6, 1989 to a mortgage in the amount of \$125,000 registered in favour of 542052 Ontario Limited (the "542052 mortgage"). Upon this postponement, the Konstantinidis mortgage ranked seventh. The funds advanced under the 542052 mortgage were to be used for the renovations on the property as the owner began renovations with the \$41,000 previously advanced on the \$88,000 mortgage and the property was in an unsaleable condition. Konstantinidis refused to fund the balance of this mortgage as it was insufficient to complete the renovations. As of October 12, 1989, the property was appraised at \$700,000 based upon 100% completion of ongoing renovations (Document Book, Tab 3).

10. A Document General and Agreement postponing the Konstantinidis mortgage to the 542052 mortgage was registered on title on December 6, 1989 (Document Book, Tab 4). The Document General contains signatures purporting to be those of Mr. and Mrs. Konstantinidis. Mr. and Mrs. Konstantinidis deny executing the Document General to permit the postponement of their mortgage. The Solicitor was not present when the Document General was signed and did not take any steps to verify their signatures.

26th September, 1996

11. In 1991, the property was sold under power of sale by the fourth mortgagee for \$365,000. There was a shortfall of funds, and accordingly, no funds were available to pay out the \$88,000 mortgage and clients lost their entire \$41,000 investment.

67 Tambrook Drive, Scarborough and
Lot 110, Plan 776, Township of Tiny

12. By mortgages registered November 20, 1988 on each of the above-noted properties, Mr. and Mrs. Konstantinidis advanced the sum of \$26,000 to Robert Hostler. The Solicitor prepared and registered the mortgages.

13. On or about July 10, 1989, Robert Hostler provided the Solicitor, in trust, with funds totalling \$25,918.40 to pay out the mortgages (see trust ledger - Document Book, Tab 5)

14. The Solicitor, in error, paid \$25,000 of these proceeds to his clients, George and Anastasia Georgeadis, by trust cheque dated July 21, 1989 (Document Book, Tab 6). The trust cheque was written by a temporary secretary on the Konstantinidis trust ledger card and noted as being paid to A & G Georgeadis (see Tab 5). The Solicitor failed to review the cheque prior to signing it. The \$26,000 was never repaid to Mr. and Mrs. Konstantinidis.

15. The discharge of the \$26,000 mortgage registered against lot 110, plan 776, Township of Tiny, was registered by the Solicitor on October 20, 1989 (Document Book, Tab 7). The discharge of the mortgage on 67 Tambrook Drive, Scarborough was registered on February 18, 1992 (Document Book, Tab 8)

16. The clients had no knowledge that the mortgages had been paid out and did not direct the Solicitor to pay out any of the mortgage proceeds as set out above.

17. The discharge pertaining to the Township of Tiny property contained signatures of those purporting to be those of the Konstantinidises. However, they both deny ever having executed this document. The Solicitor was not present when the discharge was executed. The Solicitor failed to satisfy himself that the clients had signed the discharges of the mortgages.

11 Cornelia Court, Flamborough, Ontario

18. On or about December 5, 1988 upon the instructions of Effie Banks, the Solicitor registered a mortgage (Document Book, Tab 9) in favour of these clients in the amount of \$40,000 secured by the above-noted property. The property was owned by Fransceso and Maria Izabeta.

19. The mortgage was discharged in or about June, 1989. The total mortgage proceeds, together with interest, for a total of \$42,337.00 were paid to the Solicitor in trust.

20. According to the Solicitor, Effie Banks instructed the Solicitor to reinvest these funds. The Solicitor failed to confirm with the clients that these were their instructions. According to Mr. and Mrs. Konstantinidis, these were not their instructions. The Solicitor advanced \$25,000 to Teresa Sergnese, secured by a mortgage in favour of Mr. and Mrs. Konstantinidis on Ms. Sergnese's property at 340 Dixon Road, Toronto (Document Book, Tab 10).

21. The Solicitor also arranged for Mr. and Mrs. Konstantinidis to receive a \$16,000 interest in a \$72,000 mortgage, registered in the name of the Solicitor, on a property at 32 Kew Beach Avenue, Toronto, owned by Louise Kippen (Document Book, Tab 11).

22. In August 1989, the Dixon Road property was sold and the \$25,000 mortgage was paid out to Mr. and Mrs. Konstantinidis with interest.

23. In May 1989, the Kew Beach property was sold. The Solicitor transferred the Konstantinidises' 16,000 interest in the \$72,000 mortgage on this property to a \$16,000 interest in a \$40,000 mortgage registered in favour of the Solicitor on May 17, 1989 on a property owned by Maria Borde at 81 Grayson Avenue, Toronto (Document Book, Tab 12). The balance of the mortgage was held in trust by the Solicitor for another client. This was a third mortgage.

24. The Borde property was subsequently sold under power of sale. There were no funds available to pay out the \$16,000 interest of Mr. and Mrs. Konstantinidis and as such, this portion of their investment was lost.

George and Anastasia Georgeadis

- (c) He misapplied client trust funds in the sum of \$52,595.20 from his clients, Mr. and Mrs. Georgeadis, by disbursing the funds prior to obtaining agreed upon security for the funds;
- (d) He acted in a conflict of interest on the sale of a property located at 40 Victoria Crescent, Orillia by acting for the vendors and the mortgagees, Mr. and Mrs. Georgeadis, which mortgagees were members of a mortgage syndicate holding the mortgage on the property, in which the Solicitor was also an investor;
- (e) He failed to act in a conscientious, efficient and diligent manner by failing to send reporting letters to Mr. and Mrs. Georgeadis on the discharge of the collateral mortgages registered on title to 205 Shannon Street, Orillia and 40 Victoria Crescent, Orillia.
- (f) He preferred his own interests over the interest of his clients, Mr. and Mrs. Georgeadis, by paying himself \$15,224.85 from the sale proceeds of 40 Victoria Crescent, Orillia, on account of his \$20,000 interest in a \$140,000 mortgage held by Mr. and Mrs. Georgeadis without advising Mr. and Mrs. Georgeadis.

25. On April 15, 1988, Mr. and Mrs. Georgeadis mortgaged their residence at 360 Mortimer Ave., Toronto for \$140,000 in favour of the CIBC Mortgage Corporation (Document Book, Tab 13). The Solicitor acted for them on the mortgage transaction and in locating subsequent investments for them with these funds. Mr. and Mrs. Georgeadis were also referred to the Solicitor by Effie Banks. Mr. Georgeadis gave the Solicitor full authority to use his own discretion in locating and investing in mortgages.

26. The Solicitor received the net proceeds of \$139,419.70 in trust in respect of the mortgage financing. With these proceeds, the Solicitor paid out the first mortgage of \$17,787.11 held by Doris Carleton and paid \$150 discharge fee to Ms. Carleton's solicitor. The balance of the mortgage proceeds, approximately \$120,000 was paid to Brian Kristine Denena and used to pay off the mortgages on properties owned by them (see client ledger - Document Book, Tab 14).

27. As security for the \$120,000 advance, on April 12, 1988, the Solicitor registered a \$140,000 mortgage in favour of Mr. and Mrs. Georgeadis on the Denena's residence at 1335 Chedboro Crescent in Oakville and collateral mortgages, each in the amount of \$140,000 on other properties owned by the Denenas at 205 Shannon Street, Orillia and 40 Victoria Crescent, Orillia (Document Book, Tab 15).

26th September, 1996

28. The balance of the mortgage (\$20,000) was advanced by the Solicitor from his own funds in consideration of which he received a 14.3% interest in the mortgage. The Solicitor felt obliged to do this as Effie Banks had previously made arrangements for the \$140,000 mortgage to the Denenas and they were relying on it. This arrangement confirmed by way of letter dated June 7, 1988 and attached memoranda from the Solicitor to Mr. and Mrs. Georgeadis (Document Book, Tab 16).

29. Brian and Kristine Denena purchased 1335 Chedboro Crescent in March, 1988 for \$259,190.00. The \$140,000 mortgage to Mr. and Mrs. Georgeadis, registered on April 12, 1988, was a third mortgage behind a first and second mortgage which had an accumulative face value of \$286,000 (see abstract - Document Book, Tab 17).

30. The property was refinanced in late 1988 with Household Realty Corporation. As a result, monies were advanced to Mr. Rowatt and deposited in trust. The Solicitor disbursed \$24,720 on behalf of the clients and invested these monies in a third mortgage in the amount of \$28,000 on a property at 4 McCallum Court in Brampton owned by a Mr. Baker. In addition, Mr. Rowatt invested \$12,000 of his own money as a fourth mortgage on Mr. Baker's property.

31. The Baker mortgage was discharged on November 30, 1989. The clients received payment in full plus interest.

Sale of 40 Victoria Crescent, Orillia

32. The \$140,000 mortgage on 40 Victoria Crescent, Orillia, was a second mortgage behind a first mortgage of approximately \$19,730.00 held by the Toronto-Dominion Bank.

33. The Solicitor acted for the Denenas on the sale of this property for \$98,000 in July, 1988. The Solicitor did not advise Mr. and Mrs. Georgeadis that the property was being sold or that he acted for the vendors. A reporting letter was not sent to them by the Solicitor.

34. The mortgages on title, with the exception of the Georgeadis mortgage, were paid off from the sale proceeds in accordance with the Denenas' direction. The Solicitor received, in trust, the sale proceeds of \$18,954.85 from which he paid himself \$15,724.85 as a partial payment of his \$20,000 interest in the \$140,000 mortgage. The Georgeadis received nothing (Document Book, Tab 18). The Solicitor did not advise Mr. and Mrs. Georgeadis that he paid himself the \$15,574.85. In making this payment, the Solicitor preferred his won interest over that of his clients.

Sale of 205 Shannon Street, Orillia

35. The \$140,000 mortgage on the 205 Shannon Street Orillia property was a second mortgage behind a first mortgage held by National Trust of about \$63,750.00.

36. In October, 1988, the Denenas sold this property for \$135,000. Gregory Mulligan acted for the Denenas on the sale.

37. At the time of the sale, the balance due on the Georgeadis mortgage was approximately \$97,080.00. On October 19, 1988, Mr. Mulligan paid the Solicitor the sum of \$59,762.00 in trust, being the balance of the sale proceeds in exchange for the discharge of the mortgage. The mortgage was discharged (Document Book, Tab 19).

26th September, 1996

38. Upon receipt of the \$59,762.52, the Solicitor made the following payments:

\$1,333.33 to Effie Banks;

\$1,333.33 to Seamus Keown;

\$52,595.20 to Brian and Kristine Denena;

\$1,633.34 to the Solicitor.

Only \$2,867.32 was paid to Mr. and Mrs. Georgeadis (see client trust ledger - Document Book, Tab 20)

39. The Solicitor advised Mr. Georgeadis in October, 1988 that the Denenas were selling the 205 Shannon Street property and that a discharge on the mortgage would be required. Mr. Georgeadis agreed to sign the discharge of the mortgage and for the sale proceeds to be paid to Mr. Denena, rather than to pay the Georgeadis, on the basis of the Solicitor's advice to him that he would receive replacement security in the nature of a mortgage and a condominium in Scarborough and a mortgage on the lands described as a summer resort property owned by Mr. Denena. The funds were disbursed to the Denenas who thereafter refused or were unable to provide replacement security. The Solicitor admits that the funds ought not to have been paid out until such time as the replacement security had been arranged.

40. The Solicitor failed to provide Mr. and Mrs. Georgeadis with a reporting letter concerning the discharge of the mortgage on this property.

Complaint D150a/92 Particulars

2(a) He failed to advise his client, Jae Lee, that a \$9,000 brokerage fee was paid out of funds advanced by Mr. Lee, on a refinancing of a property at 491 Silverthorne Ave. in Toronto, which fee was disbursed as follows: \$4,500 to Wall Street Financial Corp (Canada) Inc., a company operated by the Solicitor, and \$4,500 to one Seamus Keown;

(b) He acted in a conflict of interest by acting for the vendor and the purchaser in relation to a real estate and refinancing transaction for 491 Silverthorne Ave. in Toronto, without the knowledge or consent of his mortgagor client, Jae Lee;

(c) He failed to act in a conscientious, efficient and diligent manner by failing to send reporting letters to his client, Corneth Smith, on her transfer of title of 491 Silverthorne Avenue, Toronto, and to his client, Jae Lee, on the discharge of his \$40,000 mortgage and his \$28,000 mortgage investment;

41. This complaint arises out of certain mortgage financing on a property known municipally as 491 Silverthorne Ave., Toronto (the "Property") in January, 1989.

42. As of 1988, Corneth Smith was the legal owner of the Property. In December, 1988, Ms. Murray arranged for the refinancing of the Property through Seamus Keown, a mortgage broker. Jae Lee, who was seeking to invest certain funds, was introduced to the Solicitor by Mr. Keown. At the time, the Property was subject to a first mortgage of approximately \$120,000 in favour of Jack Steinberg.

26th September, 1996

43. In January, 1989, as a result of discussions with Mr. Keown and the Solicitor, Jae Lee entered into a refinancing agreement with Ms. Murray resulting in a \$40,000 second mortgage being registered on the Property on December 16, 1988 in favour of Mr. Lee (Document Book, Tab 21). The maturity date of the mortgage was June 16, 1989. The Solicitor prepared the mortgage and acted for Mr. Lee on the transaction.

44. Ms. Smith executed an acknowledgement that the Solicitor was not acting as her lawyer in this transaction (Document Book, Tab 22).

45. By early June, 1989, the first mortgage and Jae Lee's second mortgage were in arrears and taxes were unpaid. The first mortgagee commenced power of sale proceedings for recovery of the sum of \$122,244.79 on June 5, 1989. Shortly thereafter, on June 27, 1989, the Solicitor drafted a Notice of Sale under mortgage seeking \$42,700 on behalf of Mr. Lee (Document Book, Tabs 23 and 24).

46. As of June 12, 1989, the Property was appraised with a value of \$190,000 (Document Book, Tab 25).

47. By transfer registered October 5, 1989, Ms. Smith sold the Property to her daughter, Winsome Murray, pursuant to an Agreement of Purchase and Sale (Document Book, Tab 26) at the appraised price of \$190,000. Winsome Murray signed a Statement of Mortgage, disclosing a \$9,000 brokerage fee paid to Olympus Financial Services (Document Book, Tab 27). The Solicitor acted for both Ms. Smith and Ms. Murray on the transaction.

48. The Solicitor advised Mr. Lee that the Property was being sold and that he could only receive the sum of approximately \$12,000 in cash and would be provided with a new \$28,000 mortgage on the Property which would secure the balance of his investment. Mr. Lee had wanted to be paid out in full but was told by the Solicitor that there would be insufficient funds to do so.

49. Mr. Lee agreed to this arrangement and signed a discharge of the \$40,000 second mortgage. Mr. Lee says that he was advised by the Solicitor that the \$28,000 mortgage would be a second mortgage as it was to replace his previous second mortgage when registered on October 6, 1989. It was a third mortgage (Document Book, Tab 28).

30. Winsome Murray obtained new first mortgage financing in the sum of \$142,500 from Municipal Savings and Loan Corporation and new second mortgage financing in the sum of \$19,000 from Mary Colangelo. Both these mortgagees were represented by their own solicitors on the mortgage financing.

51. The proceeds of the new first mortgage financing were applied by the Solicitor as follows:

<u>Amount</u>	<u>Payee</u>
\$125,401.12	Jack Steinberg (to pay out first mortgage)
\$ 1,975	Steinberg, Greenspoon & Associates (legal fees)
\$ 1,150.94	Treasurer, City of York
\$ 13,172.94	Jae Lee (\$12,000 on second mortgage and interest)

(See Direction - Document Book, Tab 29)

52. The Solicitor received \$17,800 in trust being the net proceeds of the new second mortgage loan from Mary Colangelo. The Solicitor applied the proceeds as follows:

26th September, 1996

<u>Amount</u>	<u>Payee</u>
\$2,800	Jay Rowatt (to pay back prior loan from Solicitor to Jae Lee)
\$4,500	Olympus Financial Services (Shamus Keown - 50% of brokerage fee for \$28,000 third mortgage)
\$4,500	Wall Street Financial Corporation (Canada) Inc. (Jay Rowatt - 50% of brokerage fee for \$28,000 third mortgage)
\$3,037	Jay Rowatt (for fees and disbursements)
\$ 480	Treasurer of Ontario
\$2,483	Balance held in trust by Jay Rowatt for Jae Lee

53. Jae Lee was not aware that the Solicitor and Mr. Keown took a total of \$9,000 in brokerage fees for the \$28,000 third mortgage.

54. The Solicitor did not provide Jae Lee with a reporting letter after the close of the mortgage transaction nor did he provide him with a copy of the \$28,000 third mortgage until after the Law Society's investigation began. The Solicitor reported to Ms. Murray on the purchase of the Property by letter dated October 10, 1989 (Document Book, Tab 30). The Solicitor did not provide Ms. Smith a reporting letter on the transfer of the Property.

55. The replacement of the \$40,000 second mortgage with the \$28,000 third mortgage resulted in less equity but, arrears of both existing mortgages, including legal fees, were brought up to date, taxes were paid in full, Jae Lee received partial payment and the new owner, Winsome Murray, had employment and assets.

56. Mr. Lee was not advised by the Solicitor that he also acted for Ms. Smith and Ms. Murray on the transaction.

57. Winsome Murray failed to make mortgage payments to Municipal Savings and Loan Corporation resulting in the Property's eventual sale under power of sale. There was a shortfall of funds available to pay Jae Lee resulting in the loss of the entire \$28,000 investment.

V. PRIOR DISCIPLINE

58. The Solicitor was reprimanded in Convocation on May 24, 1990 for altering a trust cheque to satisfy a financial obligation from a client.

59. On November 23, 1995, for not filing his forms for the fiscal year ended April 30, 1994, the Solicitor was suspended for a period of one month and indefinitely thereafter until his filings are made, such suspension is to commence at the conclusion of his current suspension.

DATED at Toronto, this 12th day of December, 1995".

RECOMMENDATION AS TO PENALTY

The Committee recommends that Jay Duncan Rowatt be granted permission to resign.

26th September, 1996

REASONS FOR RECOMMENDATION

The Committee received a joint submission as to penalty and recognizing the principle which encourages a committee to accept joint submissions and having reviewed the facts and circumstances were happy to concur.

The professional misconduct was of a serious nature but in view of the fact that, the Solicitor had not been practising for some time it related to matters in 1988 and 1989, and that further punishment of the Solicitor would not in any way assist the public, it was agreed that the representations made on behalf of both the solicitor and society should be accepted.

Jay Duncan Rowatt was called to the Bar on April 13, 1978.

ALL OF WHICH is respectfully submitted

DATED this 9th day of May, 1996

Richmond C. E. Wilson, Q.C. Chair

The solicitor had advised counsel for the Society that he did not take issue with the service of the Report and further that he would not be present at Convocation.

The finding was confirmed and the Report was adopted.

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

There were questions from the Bench.

It was moved by Mr. Millar, seconded by Mr. Cole that the solicitor be granted permission to resign.

Carried

Re: Emily June McASKIE - Burlington

The Secretary placed the matter before Convocation.

Messrs. Topp, Marrocco and Swaye, Ms. Cronk and Ms. Curtis withdrew for this matter.

Ms. Rhonda Cohen appeared for the Society and Mr. John Turingia appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 29th May, 1996, together with the Affidavit of Service sworn 13th June, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 11th June, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (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:

26th September, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Jane Harvey, Chair
Heather J. Ross
Gerald A. Swaye, Q.C.

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

Rhonda Cohen
for the Society

EMILY JUNE McASKIE
of the City
of Burlington
a barrister and solicitor

John Turingia
for the solicitor

Heard: April 16, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On August 18, 1995 Complaint D226/95 was issued; on November 2, 1995 Complaint D254/95 was issued; and, on March 27, 1996 Complaint D91/96 was issued against Emily June McAskie alleging that she was guilty of professional misconduct. On April 16, 1996 these complaints were withdrawn and replaced by Complaints D226a/95, D254a/95 and D91a/96 respectively.

The matter was heard in public on April 16, 1996 before this Committee comprising Jane Harvey, Chair, Heather Ross and Gerald Swaye, Q.C. The Solicitor attended the hearing and was represented by John Turingia. Rhonda Cohen appeared on behalf of the Law Society.

DECISION

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

Complaint D226a/95

2. a) She failed to serve her client, Maureen Browning, in a conscientious, diligent and efficient manner in respect of a matrimonial matter, in that she failed to inform her client that the said action had been dismissed for delay and that costs had been awarded against her;
- b) She failed to comply with the Order of Clarke J., dated August 30, 1994, by failing to release forthwith the entire file of her client, Maureen Browning, to Brigid Finlayson, a fellow solicitor;
- c) She failed to provide a reply to the Law Society regarding a complaint by Maureen Browning; and

26th September, 1996

- d) She failed to comply with her Undertaking to the Law Society, dated September 27, 1990, to reply promptly to communications from the Law Society.

Complaint D254a/95

- 2. b) She failed to reply to the Law Society regarding a complaint by Anne Popovic despite letters dated March 18, 1993, April 20, 1993 and July 9, 1993;
- c) She failed to comply with her undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Anne Popovic;
- d) She failed to reply to the Law Society regarding a complaint by Lawrence Lagowski despite letters dated April 23, 1993 and July 9, 1993;
- e) She failed to comply with her Undertaking dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Lawrence Lagowski;
- g) She failed to reply to the Law Society regarding a complaint by Maurice Penzo despite letters dated April 30, 1993 and July 9, 1993;
- h) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Maurice Penzo;
- i) She failed to reply to the Law Society regarding a complaint by Heather Huffman despite letters dated September 29, 1993 and November 1, 1993 and telephone messages left on October 19, 1993 and October 22, 1993;
- j) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Heather Huffman;
- k) She failed to reply to the Law Society regarding a complaint by Sung-Sook Kim despite letters dated December 13, 1993, January 24, 1994 and telephone messages left on January 17, 1994 and January 21, 1994;
- l) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Sung-Sook Kim;
- m) She failed to honour a financial obligation incurred in relation to her practice to Russ Rae Appraisals Ltd. in the amount of \$267.50 despite requests on May 19, 1993, July 16, 1993, August 16, 1993 and October 28, 1993;
- n) She failed to reply to the Law Society regarding a complaint by Bruce W. Rae despite letters dated January 10, 1994 and February 7, 1994 and telephone messages left on January 26 and 28, 1994;
- o) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Bruce W. Rae;

26th September, 1996

- p) She failed to deliver the file of her client, Joanne Lee McKay, to the client's new solicitor Harold Berry, despite letters dated August 18, 1994, August 25, 1994 and September 6, 1994;
- q) She failed to comply with the Order of Mr. Justice Speyer dated September 1, 1994 to release forthwith the entire file of her client, Joanne Lee McKay, to Harold Berry, the client's new solicitor;
- r) She failed to reply to the Law Society regarding a complaint by Harold Berry despite letters dated September 20, 1994, October 11, 1994 and November 1, 1994 and telephone messages left on September 9, 1994, September 12, 1994 and September 16, 1994, October 19, 1994 and October 24, 1994;
- s) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Harold Berry;
- t) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to respond promptly either personally, or if appropriate, through office staff, to written or telephone communications from another solicitor, Harold Berry;
- u) She failed to serve her client, Ron Ellis, in a conscientious, diligent and efficient manner in that she failed to ensure that the client understood his obligations respecting an order for a pension valuation;
- v) She failed to serve her client, Kathy Douglas, in a conscientious, diligent and efficient manner in that she failed to attend at a hearing on April 7, 1994 while solicitor of record for the client;
- w) She failed to serve her client, Lynne M. Bell, in conscientious, diligent and efficient manner in that she failed to answer reasonable requests from her client, Lynne M. Bell, regarding the status of her separation agreement;
- x) She failed to reply to the Law Society regarding complaints by Lynne M. Bell despite letters dated January 5, 1995 and February 3, 1995 and telephone messages left on January 25, 1995 and January 31, 1995; and
- y) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Lynne M. Bell.

Complaint D91a/96

- 2.
 - a) She failed to reply to the Law Society regarding a complaint by Margaret Thomas despite letters dated January 27, 1995, May 17, 1995 and July 17, 1995 and a telephone message left on April 27, 1995;
 - b) She failed to respond to communications from Diane Daly, a solicitor, regarding her client, Ann Litavski; and
 - c) She failed to reply to the Law Society regarding a complaint by Ann Litavski despite letters dated May 24, 1995 and July 17, 1995.

26th September, 1996

EVIDENCE

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

Re: Complaints D226a/95 and D254a/95

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D226a/95 and D254a/95 and is prepared to proceed with a hearing of these matters on April 16 and 17, 1996.

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 D226a/95 and D254a/95 with her solicitor, Mr. John Turingia, and admits the particulars contained therein. In addition, unless expressly stated herein, the Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1979. She practices as a sole practitioner.

Complaint D226a/95

Particular 2(a) She failed to serve her client, Maureen Browning, in a conscientious, diligent and efficient manner in respect of a matrimonial matter, in that she failed to inform her client that the said action had been dismissed for delay and that costs had been awarded against her.

5. In or about August, 1991, the Solicitor was retained by the complainant, Maureen Browning, who was then contemplating separating from her husband. On June 26, 1992, the matrimonial house was sold pursuant to a court order. The Solicitor acted on the sale of the home and received the proceeds in trust. In early July, 1991, the Solicitor paid out to each of Mr. and Ms. Browning their respective shares of the proceeds of the sale of the matrimonial home.

6. After the sale of the matrimonial home, Ms. Browning instructed the Solicitor to attempt to settle the dispute, and if settlement was not possible to proceed to trial expeditiously. Settlement was not possible. Accordingly, an examination for discovery took place in the summer of 1993. In October 1993, the Solicitor advised Ms. Browning that her action could be listed for trial sixty days after the filing of a trial record.

7. On or about November 29, 1993, the Solicitor's office received a Status Notice (Tab 1, Document Book) advising that Ms. Browning's action would be dismissed unless it was set down for trial within ninety days. The Solicitor did not report receipt of the Status Notice to Ms. Browning. The Solicitor states that the reason she did not report the Status Notice to Ms. Browning, was that she was not made aware of the Status Notice because, upon receipt of the Notice, the Solicitor's office staff filed it directly into Ms. Browning's file.

8. On April 5, 1994, Ms. Browning's action was dismissed for delay. A copy of the Order dismissing the action is contained at Tab 2 of the Document Book. The Solicitor did not report to Ms. Browning that her action had been dismissed.

9. Throughout the months of June and July, 1994, Ms. Browning did not receive support payments from the Family Support Plan. Accordingly, in July 1994, Ms. Browning attended at the Milton court to inquire into the status of her action. At that time, Ms. Browning discovered, for the first time, that her action had been dismissed.

10. On or about July 15, 1994, Ms. Browning served upon the Solicitor a Notice of Intention to Act in Person. The Solicitor states that upon receiving the said Notice of Intention, the Solicitor reviewed Ms. Browning's file and learned, for the first time, that her office had received a Status Notice in November, 1993. The Solicitor states that she then contacted Mr. Browning's solicitor's office, spoke to his secretary and learned from her that Ms. Browning had become aware that her action had been dismissed. The Solicitor did not attempt to contact Ms. Browning directly.

11. On August 8, 1994, Ms. Browning called the Solicitor's office and requested that the Solicitor release her file. Subsequently, Ms. Browning retained another solicitor, Brigid Finlayson, to assume carriage of her matter.

Particular 2(b) She failed to comply with the Order of Clarke J., dated August 30, 1994, by failing to release forthwith the entire file of her client, Maureen Browning, to Brigid Finlayson, a fellow solicitor.

12. Brigid Finlayson, on behalf of Ms. Browning, brought an application to set aside the Order dismissing Ms. Browning's action. By Order of Clarke, J. dated August 30, 1994 (Tab 3, Document Book), the Order dismissing the action was set aside and the Solicitor was ordered to deliver to Ms. Finlayson forthwith Ms. Browning's entire file.

13. On or about September 1, 1994, Ms. Finlayson delivered to the Solicitor a copy of the Order of Clarke, J. The Solicitor did not respond. Accordingly, on or about September 2, 1994, Ms. Finlayson advised the Law Society of same (Tab 4, Document Book).

14. The Solicitor did not appeal the Order of Clarke, J., nor did she seek to have its terms varied.

15. The Solicitor did not deliver Ms. Browning's file to her until on or about March 14, 1996.

16. The Solicitor states that she was not served with the Notice of Motion seeking the said Order and accordingly her rights to a lien in the file were never considered, and further that the Order was made on the consent of the parties only. The Solicitor also states that throughout her carriage of this matter she provided Ms. Browning copies of all pleadings, correspondence and transcripts.

Particular 2(c) She failed to provide a reply to the Law Society regarding a complaint by Maureen Browning.

17. By registered letter dated June 5, 1994 (Tab 5, Document Book), Ms. Browning made a complaint to the Law Society regarding the foregoing.

18. By letter dated July 20, 1994 (Tab 6, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Browning's letter dated June 5, 1994 and requested her comments within two weeks. The Solicitor did not respond.

26th September, 1996

19. By letter dated August 18, 1994 (Tab 7, Document Book), the Law Society again wrote to the Solicitor, and requested her response to the complaint within fourteen days. The Solicitor did not respond.

20. By letter dated August 8, 1994 (Tab 8, Document Book), Ms. Browning reiterated her complaint against the Solicitor.

21. By registered mail dated September 12, 1994 (Tab 9, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was also advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

22. By letter dated September 21, 1994 (Tab 10, Document Book), the Law Society wrote to the Solicitor enclosing a further copy of the Order Clarke, J. dated August 30, 1994, and requesting that the Solicitor comment with respect to the same. The Solicitor did not respond.

Particular 2(d) She failed to comply with her Undertaking to the Law Society, dated September 27, 1990, to reply promptly to communications from the Law Society.

23. By failing to respond to the Law Society regarding the complaint of Ms. Browning, the Solicitor breached her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of such correspondence. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Complaint D254a/95

Particular 2(a) She failed to serve her client, Anne Popovic, in a conscientious, diligent and efficient manner in that she:

- (i) failed to advise the client of an examination for discovery scheduled for December 17, 1992; and
- (ii) failed to render a final account.

24. On or about June 23, 1992, the Solicitor was retained by Anne Popovic with respect to her divorce matter. A petition for divorce was prepared by the Solicitor and executed by the client on or about June 26, 1992.

25. On July 28, 1992 the Solicitor issued an interim account (Tab 12, Document Book). At present, the balance of this account, in the amount of \$201.80, remains outstanding.

26. On or about July 15, 1992, Ms. Popovic's husband was served with a petition for divorce. On or about August 10, 1992, the Solicitor prepared, and Ms. Popovic attended at the Solicitor's office and executed, an affidavit to obtain a divorce as undefended. Shortly thereafter, in August, 1992, the Solicitor was served with a Notice of Appearance and an answer and counter petition.

27. On or about September 1, 1992, the Solicitor and Ms. Popovic met and reviewed the responding material. On or about September 3, 1992, the Solicitor prepared, and Ms. Popovic executed each of an answer to the counter petition, financial statement and a preliminary affidavit for interim relief. At that time, Ms. Popovic had prior orders or the Court obtained by previous counsel, providing her with custody and exclusive possession of the matrimonial home. In addition, Ms. Popovic's husband was paying the mortgage on the matrimonial home. In the circumstances, the Solicitor states that she advised Ms. Popovic to rely on these prior orders. Notwithstanding this advice Ms. Popovic instructed the Solicitor to bring a new motion for interim relief. The Solicitor accepted these instructions, but because she did not consider the motion to be in the nature of an emergency, or requiring rapid response, did not tend to the preparation of the motion materials in a timely manner.

28. During the period October 7 to 15, 1992, Ms. Popovic called the Solicitor and left messages for her to return the calls. The Solicitor states that she attempted to return those calls, however, Ms. Popovic was not at home and did not have an answering machine or service. On or about October 16, 1992 Ms. Popovic spoke with the Solicitor. It is Ms. Popovic's evidence that during the conversation the Solicitor advised that she had scheduled a court date for October 22, 1992. The Solicitor denies that this was the advice given to Ms. Popovic, and states that she advised Ms. Popovic at the time that she would "try" to have the motion prepared and served for on October 22, 1992 appearance. The Solicitor states that she was unable to have the motion materials prepared for October 22, 1992. The Solicitor did not advise Ms. Popovic that the motion would not be heard that day.

29. On the morning of October 22, 1992, Ms. Popovic called the court office to ask for travel directions. She was advised that a hearing of her matter had not been scheduled. Ms. Popovic then called the Solicitor's office and was advised by the Solicitor's secretary that the matter had been scheduled for October 28, 1992. When Ms. Popovic sought to confirm this information with the court, she was again advised that a hearing date had not been scheduled.

30. On each of November 4, 5 and 6, 1992, Ms. Popovic called the Solicitor and left a message for her to return the call. The Solicitor did not return the calls.

31. By letter dated November 12, 1992 (Tab 13, Document Book), Ms. Popovic wrote to the Solicitor to express her discontent with the services provided. The Solicitor was requested to provide an explanation as to why Ms. Popovic had not heard from the Solicitor and to provide a final account for services rendered. The Solicitor did not respond, nor did she submit a final account. The Solicitor states that she considered Ms. Popovic's letter to have terminated her retainer.

32. By letter dated November 12, 1992 (Tab 14, Document Book) (sent by registered mail on November 24, 1992), Ms. Popovic again set out her concerns about the service provided by the Solicitor. This letter was copied to the Law Society.

33. On or about December 1, 1992, the Solicitor's secretary, who was not aware that the Solicitor considered herself to have been relieved of her duties by Ms. Popovic, provided available dates to Ms. Popovic's husband's solicitor, Mr. Crackower, for the conduct of examinations for discovery.

34. By letter dated December 1, 1992 (Tab 15, Document Book), Mr. Crackower wrote to the Solicitor to confirm the telephone conversation between their respective offices and to serve the Solicitor with a Notice of Examination returnable December 17, 1992. The Solicitor did not advise Ms. Popovic of the Notice of Examination.

26th September, 1996

35. On or about December 15, 1992, the Solicitor received correspondence from a solicitor, Diane F. Daly, advising that she had been retained to act for Ms. Popovic.

36. By facsimile dated December 15, 1992 (Tab 16, Document Book), the Solicitor advised Mr. Crackower that she no longer acted for Ms. Popovic and that she would not be attending at the examination for discovery scheduled for December 17, 1992. The Solicitor did not expressly advise Mr. Crackower that she had been contacted by Ms. Daly or that Ms. Daly had been retained by Ms. Popovic. The Solicitor, without the express consent of Mr. Crackower, attempted to cancel the appointment with the Examiner.

37. By facsimile dated December 15, 1992, to the Solicitor (Tab 17, Document Book) Mr. Crackower confirmed the following:

- (a) the Solicitor had not advised Ms. Popovic of the date of the examination for discovery and had not contacted her for some time;
- (b) the Solicitor had taken no steps to remove herself as Solicitor of record for Ms. Popovic;
- (c) the date of the examination for discovery had been agreed to by the Solicitor's office on December 1, 1992; and
- (d) if the Solicitor did not attend at the examination for discovery, her office would have to pay for the missed appointment.

38. By facsimile dated December 16, 1992 (Tab 18, Document Book), Mr. Crackower advised the Solicitor that he would attend the following day to examine Ms. Popovic and, if the Solicitor wished to examine his client, she was to advise Mr. Crackower by 1:00 p.m. that day. The Solicitor did not respond to Mr. Crackower. Neither the Solicitor nor Ms. Popovic attended at the examination for discovery.

Particular 2(b) She failed to reply to the Law Society regarding a complaint by Anne Popovic.

39. By letter dated January 5, 1993 (Tab 19, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Popovic's letter dated November 12, 1992 and requested her comments within two weeks. The Solicitor did not reply.

40. On January 26, 1993, a Law Society employee called the Solicitor leaving a message for her to return the call. The Solicitor called later that day to advise that her response would be delivered the following day. It was not. On February 2, 1993, a Law Society employee called the Solicitor and left a message for her to return the call. The Solicitor did not return the call. A copy of the handwritten notes of the telephone communications with the Solicitor are contained at Tab 20 of the Document Book.

41. By registered mail dated February 5, 1993 (Tab 21, Document Book), the Solicitor was advised of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

42. On February 8, 1993, the Solicitor's secretary called the Law Society to advise that the Solicitor was ill but was preparing her response. A copy of the message is contained at Tab 22 of the Document Book.

43. By letter dated February 26, 1993 (Tab 23, Document Book), the Solicitor responded to the Law Society.

44. By letter dated March 5, 1993 (Tab 24, Document Book), Ms. Popovic advised the Law Society that she had not been made aware of the examination for discovery scheduled for December 17, 1992, and that as a result, her husband had commenced proceedings for reimbursement of non-attendance costs. By letter dated March 18, 1993 (Tab 25, Document Book), the Law Society requested the Solicitor's comments on Ms. Popovic's allegation that she had not been advised of the examination for discovery which was scheduled for December 17, 1992. The Solicitor was also requested to render her final account to her client. The Solicitor did not respond.

45. By follow-up letter dated April 20, 1993 (Tab 26, Document Book), the Solicitor was requested to respond to the Law Society within two weeks. The Solicitor did not respond.

46. By registered mail dated July 9, 1993 (Tab 27, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was requested to respond within fourteen days. The Solicitor did not respond.

47. The Solicitor did not respond to the Law Society regarding the complaint by Ms. Popovic until March 27, 1996.

Particular 2(c) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Anne Popovic.

48. By failing to respond to the Law Society regarding the complaint of Ms. Popovic, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(d) She failed to reply to the Law Society regarding a complaint by Lawrence Lagowski.

49. The Solicitor was retained on or about April 3, 1990 by Joanna Lagowski to handle her divorce proceedings. From time to time, Mrs. Lagowski's son, Lawrence Lagowski, a solicitor, assisted his mother with the matter by reviewing the minutes of settlement and notice of motion and by speaking with the Solicitor about the progress of the separation agreement.

50. Mrs. Lagowski was not satisfied with the services provided by the Solicitor and by letter sent by priority post dated October 30, 1992 (Tab 28, Document Book), Mrs. Lagowski advised the Solicitor of same. She further advised the Solicitor that she would be retaining another solicitor and to forward the file to her immediately. The Solicitor did not respond to Mrs. Lagowski's letter.

51. By faxed letter dated November 23, 1992 (Tab 29, Document Book), Lawrence Lagowski advised the Solicitor that unless she delivered the file to his mother by November 27, 1992, he would contact the Law Society. The Solicitor did not respond to Lawrence Lagowski's letter.

52. By letter dated December 4, 1992 (Tab 30, Document Book), Lawrence Lagowski made a complaint to the Law Society on behalf of his mother.

26th September, 1996

53. By letter dated January 5, 1993 (Tab 31, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Lawrence Lagowski's letter dated December 4, 1992, and requesting the Solicitor's comments within two weeks. The Solicitor did not respond.

54. On January 26, 1993, a Law Society employee called the Solicitor leaving a message for her to return the call. The Solicitor called later that day to advise that her response would be delivered the following day. It was not. On February 2, 1993, a Law Society employee called the Solicitor and left a message for her to return the call. The Solicitor did not return the call. A copy of the handwritten notes of the telephone communications with the Solicitor are contained at Tab 20 of the Document Book.

55. By registered mail dated February 5, 1993 (Tab 32, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

56. By letter dated February 26, 1993 (Tab 33, Document Book), the Solicitor advised the Law Society that Mrs. Lagowski was a difficult client and that she provided Mrs. Lagowski with all documentation. The Solicitor further advised that the matter could have been settled some time ago but the client's instructions changed at the last moment and Mrs. Lagowski would not attend at the Solicitor's office despite arranging several appointments. The Solicitor confirmed that she may not have acted as quickly as expected during the latter part of 1992 and the beginning of 1993 due to workload and health problems.

57. By letter dated April 8, 1993 (Tab 34, Document Book), the Law Society requested Mr. Lagowski to advise if his mother received copies of documentation from the Solicitor and whether she had received her Will and an accounting for services rendered. By letter dated April 19, 1993 (Tab 35, Document Book), Mr. Lagowski advised the Law Society that his mother advised him that she had not received any of the foregoing from the Solicitor.

58. By letter dated April 23, 1993 (Tab 36, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Lagowski's letter dated April 19, 1993 and requested that the Solicitor contact the Law Society to discuss the matter. The Solicitor did not respond.

59. By registered mail dated July 9, 1993 (Tab 27, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was requested to respond within fourteen days. The Solicitor did not respond.

Particular 2(e) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Lawrence Lagowski.

60. By failing to respond to the Law Society regarding the complaint of Lawrence Lagowski, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(f) She failed to honour a financial obligation incurred in relation to her practice to All Languages Ltd. in the amount of \$266.43.

26th September, 1996

61. The Solicitor retained the services of All Languages Ltd. for the purpose of verifying the translation of a marriage certificate from Punjabi to English. An English translation was supplied to All Languages Ltd. Which translation had previously been accepted by Canadian immigration officials. For court purposes, however, an affidavit was required verifying the translation. The Solicitor's client had retained the Solicitor on a Legal Aid Certificate.

62. All Languages Ltd. prepared the affidavit as requested and delivered an invoice dated September 4, 1992 to the Solicitor in the sum of \$266.43.

63. The Solicitor refused to satisfy the account on the grounds that, in the Solicitor's view, the account was excessive. The Solicitor states that, in her opinion, it would therefore be wrong to render the account to the Legal Aid Plan. The Solicitor states that she offered to pay one-half of the outstanding account but the offer was not accepted.

64. Reminder notices from All Languages Ltd. were sent to the Solicitor on September 30, 1992, October 9, 1992 and October 20, 1992. A copy of the invoice is contained at Tab 37 of the Document Book. The Solicitor refused to remit payment.

65. The Solicitor states when she submitted her account to the Legal Aid Plan she advised the Legal Aid Plan about the dispute as to the amount of All Languages Ltd.'s account and that the account was in the amount of \$266.43. The Solicitor states that the Legal Aid Plan advised her that it would pay out only the sum of \$75.00 of All Languages Ltd.'s account upon receipt of a copy of the original invoice (the Solicitor had not included a copy of the original invoice with her account to the Legal Aid Plan).

66. The Solicitor did not submit to The Legal Aid Plan a copy of the original account, thus no payment whatsoever has been made to All Languages Ltd.

67. The Solicitor received a further demand letter from counsel for All Languages Ltd. dated December 16, 1994. The Solicitor remains eager, ready and willing to litigate the account of All Languages Ltd. on the issue of reasonableness and quantum merit.

68. The Solicitor does not admit that the facts agreed to constitute professional misconduct.

Particular 2(g) She failed to reply to the Law Society regarding a complaint by Maurice Penzo.

69. By letter dated December 16, 1992 (Tab 38, Document Book), Maurice Penzo, a principal of All Languages Ltd. made a complaint to the Law Society regarding the Solicitor's failure to pay the outstanding account.

70. By letter dated January 5, 1993 (Tab 39, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Penzo's letter dated December 16, 1992 and requested her comments within two weeks. The Solicitor did not respond.

71. On January 26, 1993, a Law Society employee called the Solicitor leaving a message for her to return the call. The Solicitor called later that day to advise that her response would be delivered the following day. No response was delivered.

72. On February 2, 1993, a Law Society employee called the Solicitor and left a message for her to return the call. The Solicitor did not return the call. A copy of the handwritten notes of the telephone communications with the Solicitor are contained at Tab 20 of the Document Book.

26th September, 1996

73. By registered mail dated February 5, 1993 (Tab 40, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee.

74. By letter dated February 26, 1993 (Tab 41, Document Book), the Solicitor advised the Law Society that, in her view, the account at issue was excessive, and she had offered to pay one-half of the bill which offer was rejected. The Solicitor also advised that, in her view, The Legal Aid Plan would not satisfy the whole amount of the account.

75. On April 13, and 14, 1993, a Law Society employee left messages for the Solicitor. On April 14, 1993, the Solicitor's secretary returned the call and was asked by the Law Society to inquire whether The Legal Aid Plan would, in fact, pay the outstanding account. The Solicitor's secretary advised that she would have the Solicitor call the Law Society the following day. A copy of the handwritten notes of the telephone communications with the Solicitor's office is contained at Tabs 42 and 43 of the Document Book. The Solicitor did not respond.

76. On April 27 and 29, 1993, a Law Society employee left messages for the Solicitor to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 44 of the Document Book.

77. By letter dated April 30, 1993 (Tab 45, Document Book), the Law Society asked the Solicitor if she had submitted the subject account to The Legal Aid Plan for payment. The Solicitor was requested to respond within one week. The Solicitor did not respond.

78. By registered mail dated July 9, 1993 (Tab 27, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was requested to provide her response within fourteen days. The Solicitor did not respond.

79. The Solicitor provided a reply to the Law Society on March 27, 1996.

Particular 2(h) She failed to comply with her Undertaking to the Law Society dated September 27, 1990, to reply to written and oral communications from the Law Society regarding a complaint by Maurice Penzo.

80. By failing to respond to the Law Society regarding the complaint of Maurice Penzo, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(i) She failed to reply to the Law Society regarding a complaint by Heather Huffman.

81. The Solicitor was retained by Heather Huffman in 1989 to commence divorce proceedings and arrange for child support. In November 1992, Ms. Huffman advised the Solicitor that she intended to remarry on August 7, 1993 and was advised by the Solicitor that her divorce papers could be finalized in advance of her upcoming marriage. Ms. Huffman alleges that throughout the period January to April, 1993, Ms. Huffman either called the Solicitor or faxed her twice a week requesting the Solicitor to finalize her divorce, and that the Solicitor did not return the calls or respond to Ms. Huffman's letters. Ms. Huffman retained another lawyer.

82. By letter dated September 13, 1993 (Tab 46, Document Book), Ms. Huffman made a complaint to the Law Society regarding the foregoing.

83. By letter dated September 29, 1993 (Tab 47, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Huffman's letter dated September 13, 1993 and requested her comments within two weeks. The Solicitor did not respond.

84. On October 19 and 22, 1993, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 48 of the Document Book.

85. By registered mail dated November 1, 1993 (Tab 49, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

86. The Solicitor did not respond to the Law Society regarding the complaint by Ms. Huffman until April, 1996.

Particular 2(j) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Heather Huffman.

87. By failing to respond to the Law Society regarding the complaint of Heather Huffman, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(k) She failed to reply to the Law Society regarding a complaint by Sung-Sook Kim.

88. In October 1992, Sung-Sook Kim, through a Legal Aid certificate, retained the Solicitor to handle her divorce proceedings.

89. By letter received by the Law Society on November 29, 1993 (Tab 50, Document Book), Ms. Kim complained to the Law Society about the Solicitor.

90. By letter dated December 13, 1993 (Tab 51, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Kim's letter and requesting her comments within two weeks. The Solicitor did not respond.

91. On January 17 and 21, 1994, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 52 of the Document Book.

92. By registered mail dated January 24, 1994 (Tab 53, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

93. The Solicitor did not respond to the Law Society regarding the complaint by Ms. Kim until March 27, 1996.

26th September, 1996

Particular 2(1) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Sung-Sook Kim.

94. By failing to respond to the Law Society regarding the complaint of Sung-Sook Kim, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(m) She failed to honour a financial obligation incurred in relation to her practice to Russ Rae Appraisals Ltd. in the amount of \$267.50.

95. The Solicitor and opposing counsel jointly retained Russ Rae Appraisals Limited on or about May 17, 1993 to appraise property at 158 Nelson Street, Oakville. The instructions are contained on the Appraisal Data Sheet dated May 17, 1993, a copy of which is contained at Tab 54 of the Document Book. The appraisal was completed on May 19, 1993. A copy of the report dated May 20, 1993 is contained at Tab 55 of the Document Book.

96. An invoice dated May 20, 1993 (Tab 56, Document Book) in the amount of \$267.50, was forwarded to the Solicitor.

97. Reminder notices were forwarded to the Solicitor dated July 16, August 16 and October 28, 1993, copies of which are contained at Tabs 57, 58 and 59 of the Document Book.

98. The Solicitor states that in or about June or July 1993 she issued a cheque in payment of the account with Russ Rae Appraisals Ltd. The Solicitor further states that the cheque must have gone astray in the mail, as it was never cashed.

99. By letter dated November 16, 1993 (Tab 60, Document Book), Bruce W. Rae, the principal of Russ Rae Appraisals Ltd., made a complaint to the Law Society regarding the foregoing.

100. The Solicitor advises that, as at today's date, the Solicitor has made arrangements to satisfy the debt to Russ Rae Appraisals Ltd.

Particular 2(n) She failed to reply to the Law Society regarding a complaint by Bruce W. Rae.

101. On December 22, 1993 and December 23, 1993, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 61 of the Document Book.

102. By letter dated January 10, 1994 (Tab 62, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Rae's letter dated November 16, 1993 and requested her comments within two weeks. The Solicitor did not respond.

103. On January 26 and 28, 1994, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 63 of the Document Book.

26th September, 1996

104. By registered mail dated February 7, 1994 (Tab 64, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on February 9, 1994. The Solicitor did not respond.

105. The Solicitor did not respond to the Law Society regarding the complaint by Russ Rae Appraisals Ltd., until March 27, 1996.

Particular 2(o) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Bruce W. Rae.

106. By failing to respond to the Law Society regarding the complaint of Bruce W. Rae, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(p) She failed to deliver the file of her client, Joanne Lee McKay, to the client's new solicitor, Harold Berry.

Particular 2(q) She failed to comply with the Order of Speyers, J. dated September 1, 1994 to release forthwith the entire file of her client, Joanna Lee McKay, to Harold Berry, the client's new solicitor.

107. The Solicitor acted for Joanna McKay with respect to her divorce action. Subsequently, she retained Harold R. Berry. Twice Mr. Berry wrote to the Solicitor requesting that she deliver Ms. McKay's file. The Solicitor did not respond.

108. Accordingly, by letter dated August 18, 1994 (Tab 65, Document Book), Mr. Berry enclosed a copy of the Notice of Motion (Tab 66, Document Book), returnable on September 1, 1994 for an order that the Solicitor release the file. Mr. Berry advised the Solicitor that if the file was not received by him, the matter would be reported to the Law Society. The Solicitor did not respond.

109. By letter dated August 25, 1994 (Tab 67, Document Book), the Solicitor was again provided with a copy of the Notice of Motion by Mr. Berry. The Solicitor was advised that Mr. Berry would be seeking costs against her if the file was not received by him prior to the date of the motion. The Solicitor did not respond.

110. By Order of Speyers, J. dated September 1, 1994 (Tab 68, Document Book), the Solicitor was ordered to deliver Ms. McKay's file to Harold R. Berry forthwith. By letter dated September 6, 1994 (Tab 69, Document Book), Mr. Berry wrote to the Solicitor enclosing a copy of the Order of Speyers, J. The Solicitor did not respond.

111. By letter dated August 25, 1994 (Tab 70, Document Book), Mr. Berry made a complaint to the Law Society regarding the foregoing.

112. By letters dated November 8, 1994 and December 8, 1994 (Tabs 71 and 72, Document Book), Mr. Berry advised the Law Society that the Solicitor had not delivered the file to him.

26th September, 1996

Particular 2(r) She failed to reply to the Law Society regarding a complaint by Harold Berry.

113. On September 9, 12, and 16, 1994, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 73 of the Document Book.

114. By letter dated September 20, 1994 (Tab 74, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Berry's letter dated August 25, 1994 and requesting her comments within two weeks. The Solicitor did not respond.

115. By letter dated October 11, 1994 (Tab 75, Document Book), the Law Society provided the Solicitor with a further copy of the Order of Speyers, J. and requested that she comply with same. The Solicitor was asked to respond immediately. The Solicitor did not respond.

116. On October 19 and 24, 1994, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 76 of the Document Book.

117. By registered mail dated November 1, 1994 (Tab 77, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

Particular 2(s) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to written and oral communications from the Law Society regarding a complaint by Harold Berry.

118. By failing to respond to the Law Society regarding the complaint of Harold Berry, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

Particular 2(t) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to respond promptly either personally, or if appropriate, through office staff, to written or telephone communications from another solicitor, Harold Berry.

119. By failing to respond to Mr. Berry's request for the release of Ms. McKay's file, the Solicitor failed to comply with her Undertaking to the Law Society dated September 27, 1990 that she respond promptly either personally, or if appropriate, through office staff, to written or telephone communications from other solicitors. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

120. The Solicitor states, by way of explanation not excuse, that at the relevant time she was displaying avoidance symptoms. Accordingly, she was not opening letters from the Law Society let alone responding to them. However, the Solicitor states she continued to deal with other parties, including the Legal Aid Plan.

121. In response to a telephone call from the Legal Aid Plan, the Solicitor states that she prepared the file for pick-up by the client during the week of May 8, 1995. The client was apparently advised by the Legal Aid Plan that the file was waiting for pick up. By letter dated June 13, 1995 the Solicitor wrote to the Ontario Legal Aid Plan to advise that, notwithstanding the file's availability, the client had not yet picked it up. The client eventually retrieved the file on or about November 17, 1995.

Particular 2(u) She failed to serve her client, Ron Ellis, in a conscientious, diligent and efficient manner in that she failed to ensure that the client understood his obligations respecting an Order for a pension valuation

122. The Solicitor was retained by Ron Ellis with respect to his divorce proceedings. By Order dated August 15, 1991 (Tab 78, Document Book), the Court ordered that Mr. Ellis produce at his own expense an actuarial valuation of his pension. The Order was approved as to form and content by the Solicitor on or about September 5, 1991, and entered on or about October 7, 1991.

123. By letters dated October 16, 1991 and May 14, 1992 from opposing counsel to the Solicitor (copied by the Solicitor to Mr. Ellis), Mr. Ellis was reminded of his obligation to obtain a pension valuation. In addition, be telephone conversations between Mr. Ellis and the Solicitor's secretary on June 1 and 2, 1992, Mr. Ellis was again reminded of his obligation to obtain the pension valuation, and further that the Solicitor required the sum of \$650.00 together with a copy of Mr. Ellis' pension benefits booklet and his latest annual statement of pension value. The Solicitor states that nothing was received from Mr. Ellis client until the end of October 1992 when a handwritten letter from Mr. Ellis' then employer was received in regards to his pension.

124. Mr. Ellis states that the sum of \$650.00, together with a pension benefit booklet, was delivered to the Solicitor in or about January 1993.

125. According to the Solicitor, on September 2, 1993, Mr. Ellis made an appointment with her to discuss varying the existing Order. The Solicitor advised Mr. Ellis as to the costs associated with such a motion and also reminded him about the outstanding information which she required in order to obtain a valuation of his pension. Mr. Ellis indicated that he wanted to think about the issues and would get back to the Solicitor with instructions.

126. By letter dated October 20, 1994 (Tab 79, Document Book), Patricia E. Anderson, solicitor for Mr. Ellis' then wife, wrote to Mr. Ellis advising him that she had made several requests of the Solicitor to produce the actuarial valuation without response. Mr. Ellis was also advised that if his pension valuation was not received by Ms. Anderson within six weeks, she would seek her client's instructions to move against him for an order for contempt and costs.

127. Upon receipt of the letter from Ms. Anderson, on October 24, 1994, Mr. Ellis twice left telephone messages for the Solicitor, advising her that his wife intended to bring him to court over his failure to produce the valuation of his pension, and further that Mr. Ellis had lodged a complaint about the Solicitor with the Law Society. The Solicitor responded by letter dated October 31, 1994 (see below).

128. Meanwhile, by letter dated October 25, 1994 (Tab 80, Document Book), Mr. Ellis was reminded by Ms. Anderson of his responsibility to produce the actuarial valuation within the time frame indicated in her letter of October 20, 1994.

129. By letter dated October 29, 1994 (Tab 81, Document Book), Mr. Ellis made a complaint to the Law Society.

26th September, 1996

130. By letter dated October 31, 1994 (Tab 82, Document Book), the Solicitor wrote to Mr. Ellis as follows:

- (a) the Solicitor had heard nothing from Mr. Ellis since September 2, 1993 at which time they had met and discussed varying the court Order with respect to support obligations;
- (b) at their meeting the Solicitor and Mr. Ellis also discussed his obligation to deliver a pension valuation, and the Solicitor reminded Mr. Ellis that he had yet to deliver to her a copy of his pension benefit booklet, a statement of his current earnings, a statement of his earnings in the year of separation, a copy of his contributions and his employer's contributions to the pension plan and the name and address of the pension administrator. The Solicitor also reminded Mr. Ellis that he had been aware of his obligation to prepare an actuarial evaluation of his pension since 1991;
- (c) in 1992 the Solicitor received from Mr. Ellis a retainer in the amount of \$650.00 in regards to the evaluation of the pension, but without the necessary supporting documentation;
- (d) when Mr. Ellis delivers the necessary supporting documentation, satisfies the Solicitor's account and submits a further retainer in the amount of \$528.10, the Solicitor would proceed to have the pension evaluated.

131. By letter dated November 4, 1994 (Tab 83, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Mr. Ellis' letter dated October 29, 1994 and requested her comments within two weeks. On November 21 and November 23, 1994, a Law Society employee left messages for the Solicitor to return her calls. A copy of the handwritten notes of the telephone messages are contained at Tab 84 of the Document Book. The Solicitor did not respond.

132. By registered mail dated November 25, 1994 (Tab 85, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Law Society's letter was delivered and signed for on November 29, 1994. The Solicitor did not respond.

133. By letter dated November 28, 1994 (Tab 86, Document Book), Mr. Ellis responded to the Solicitor's letter of October 31, 1994. Mr. Ellis denied the content of the Solicitor's letter and reiterated that, after January, 1993, the Solicitor had not requested any further information from him regarding the pension valuation. Mr. Ellis further advised that during their meeting in September, 1993, when asked about the status of the pension valuation, the Solicitor told Mr. Ellis not to concern himself with it at that time because his wife was not pushing for the report.

134. By letter dated January 17, 1995 (Tab 87, Document Book), the Solicitor reiterated her response to Mr. Ellis' allegations.

Particular 2(v) She failed to serve her client, Kathy Douglas, in a conscientious, diligent and efficient manner in that she failed to attend at a hearing on April 7, 1994 while solicitor of record for the client.

135. The Solicitor's first meeting with Ms. Douglas was on or about March 14, 1994, with respect to a Notice of Application previously served on the client and returnable on March 23, 1994. The Solicitor advised Ms. Douglas that she required a financial retainer in the amount of \$500.00 and a completed financial statement from Ms. Douglas. The Solicitor states that it was clearly understood that both the financial retainer and the financial statement were to be provided

forthwith and the client agreed to do so.

136. On or about March 18, 1994, the Solicitor, believing the client would retain her as agreed, served and filed a Notice of Appearance on the Applicant's solicitors. A copy of the Notice of Appearance and Affidavit of Service are contained at Tab 88 of the Document Book.

137. On March 23, 1994, the Solicitor adjourned Ms. Douglas' matter to April 7, 1994.

138. On March 24, 1994, Ms. Douglas received a message on her answering machine from the Solicitor advising that the matter had been put over to April 7, 1994 and that the Solicitor required the retainer and financial statement forthwith.

139. Mr. Douglas states that on March 28, March 31 and April 5, 1994, she called the Solicitor to inquire about her matter but the Solicitor did not respond personally.

140. The Solicitor states that on each of March 30, April 4 and 5, 1994, the Solicitor's secretaries left a message for Ms. Douglas requesting the retainer and the financial statement.

141. On April 6, 1994, Ms. Douglas attended at the Solicitor's office but neither the Solicitor nor her secretary were available. Ms. Douglas did not leave the documents and retainer with the Solicitor's receptionist, but rather left the office and attempted to call the Solicitor twice from her home that afternoon.

142. At approximately 4:30 p.m., on April 6, 1994, the Solicitor's secretary returned Ms. Douglas' call. She advised Ms. Douglas that she would have to attend the hearing on April 7, 1994 alone because she had not yet provided to the Solicitor the necessary retainer or financial documentation.

143. Ms. Douglas immediately sought the assistance of her friend, Joe Stevens, a neighbour of the Solicitor's. At approximately 6:00 p.m. that evening, Mr. Stevens spoke by phone with the Solicitor who agreed that Ms. Douglas could deliver the retainer and the financial statement to the Solicitor's home that evening. A copy of the handwritten notes of the Law Society's telephone conversation with Mr. Stevens is contained at Tab 89 of the Document Book.

144. Ms. Douglas then delivered the subject documentation and retainer to the Solicitor's home leaving them in her mailbox; and left a message on the Solicitor's answering machine advising that the documents were in her mailbox and requesting the Solicitor to return her call. The Solicitor was not home at all that evening.

145. The Solicitor states that, at present, she has no recollection of speaking with Joe Stevens on the evening of April 6, 1994, or at any other relevant time. The Solicitor states that on the evening of April 6, 1994 she was attending a Halton County Law Association Dinner honouring Mr. Justice LeSage's then recent promotion.

146. The Solicitor admits that she received a telephone call at her home from Ms. Douglas at 7:30 a.m. on the morning of April 7, 1995, and that Ms. Douglas advised that the financial statement and retainer in the amount of \$500.00 were then in the Solicitor's mailbox. However, the Solicitor states that by that time the Solicitor was frustrated with the client's failure to provide the retainer and documentation on a timely basis and advised Ms. Douglas that she would not attend at the hearing that day. The Solicitor states that she advised Ms. Douglas that she ought to attend on her own behalf and seek a further adjournment.

26th September, 1996

147. Ms. Douglas denies this version of the events. She states that during their telephone conversation on the morning of April 7, 1994, the Solicitor confirmed that she had not yet picked up the documents from her mailbox, but that she would appear at the hearing that morning and ask that the matter be put over to another date.

148. Thereafter on April 8, April 11 and April 12, 1994, Ms. Douglas left various messages for the Solicitor asking her to call. The Solicitor did not return the calls.

149. On April 13, 1994, Ms. Douglas' husband called the court to determine the outcome of the hearing on April 7, 1994 and was advised that no one had appeared on Ms. Douglas' behalf. A copy of the court's endorsement is contained at Tab 90 of the Document Book. On that day, a Support Deduction Order was made varying a previous support order. A copy of the Order is contained at Tab 91 of the Document Book.

Particular 2(w) She failed to serve her client, Lynne M. Bell, in a conscientious, diligent and efficient manner in that she failed to answer reasonable requests from her client, Lynne M. Bell, regarding the status of her separation agreement.

150. The Solicitor was retained by Ms. Bell on or about May 4, 1994, to negotiate a separation agreement. Numerous telephone discussions were held between the Solicitor and Ms. Bell as well as the Solicitor and opposing counsel. Three person-to-person meetings with Ms. Bell were held, followed by a three-hour meeting with all parties and their solicitors. Throughout her representation of Ms. Bell, four drafts of the separation agreement were dealt with, the last one being dated September 4, 1994. The Solicitor and Ms. Bell met and reviewed this fourth draft on September 22, 1994, and the client required further changes to the draft agreement.

151. Thereafter the Solicitor became involved in other matters, including several trials. In addition, the Solicitor states that, at this time, she was short staffed and was having increasing difficulties with the firm with which she practiced. The Solicitor states that this reflected on her treatment by staff, including the receptionist. The Solicitor admits receiving some messages of telephone calls from Ms. Bell during the months of October and November 1994, to which she did not respond. The Solicitor believes that many of Ms. Bell's calls were not relayed to her by the firm's receptionist.

152. The Solicitor admits that she failed to respond to reasonable requests from her client regarding the status of her separation agreement during the months of October and November 1994.

153. Ms. Bell discharged the Solicitor in or about early December 1994.

Particular 2(x) She failed to reply to the Law Society regarding a complaint by Lynne M. Bell.

154. By letter dated December 12, 1994 (Tab 92, Document Book), Ms. Bell made a complaint to the Law Society regarding the foregoing.

155. By letter dated January 5, 1995 (Tab 93, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Bell's letter dated December 12, 1994 and requested her comments within two weeks. The Solicitor did not respond.

156. On January 25 and 31, 1995, a Law Society employee called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the handwritten notes of the telephone messages are contained at Tab 94 of the Document Book.

26th September, 1996

157. By registered mail dated February 3, 1995 (Tab 95, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was delivered and signed for on February 9, 1995. The Solicitor did not respond.

Particular 2(y) She failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply to written and oral communications from the Law Society regarding a complaint by Lynne M. Bell.

158. By failing to respond to the Law Society regarding the complaint of Lynne M. Bell, the Solicitor has failed to comply with her Undertaking to the Law Society dated September 27, 1990 to reply promptly to communications from the Law Society within one week of receipt of correspondence from the Law Society. A copy of the Solicitor's Undertaking dated September 27, 1990 is contained at Tab 11 of the Document Book.

V. DISCIPLINE HISTORY

159. On September 27, 1990, the Solicitor was Reprimanded in Committee for failing to reply to the Law Society. The Solicitor provided an Undertaking to reply promptly to communications from the Law Society, clients and other solicitors.

160. On August 20, 1991, the Solicitor was Reprimanded in Committee for failing to comply with her personal undertaking dated November 29, 1985 to obtain and register a Release of Vendor's Lien, failing to comply with reasonable promptness with her agreement to write to Canada Mortgage and Housing Corporation to obtain a letter indicating the vendor's lien referred to in her undertaking was of no force or effect, and misleading the Law Society by advising the Society by correspondence dated January 29, 1990 that she had caused a letter to be written of the same date to the Canada Mortgage and Housing Corporation when in fact she did not write to the Corporation until April 4, 1990.

DATED at Toronto this 16th day of April, 1996."

Re: Complaint D91a/96

" AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D91a/96 and is prepared to proceed with a hearing of this matter on April 16 and 17, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D91a/96 with her solicitor, Mr. John Turingia, and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

26th September, 1996

IV. FACTS

4. The Solicitor was called to the Bar on April 6, 1979. She practises as a sole practitioner.

Particular 2(a) She failed to reply to the Law Society regarding a complaint by Margaret Thomas despite letters dated January 27, 1995, May 17, 1995 and July 17, 1995 and a telephone message left on April 27, 1995.

5. The Solicitor was retained on or about November 1, 1994 by Margaret Thomas with respect to a matrimonial matter. The Solicitor was provided with a retainer in the amount of \$1,000.00. Ms. Thomas instructed the Solicitor to obtain a non-dissipation order against her ex-husband. On November 9, 1994, Ms. Thomas met with the Solicitor and swore an affidavit in support of her motion. The Solicitor had intended to file the motion materials in the Milton court office where she knew she could obtain an immediate *ex parte* order. The client insisted that the proceedings be changed to Brampton on November 9, 1994. Accordingly, the Solicitor changed the documentation and issued the proceedings in Brampton. However, it was not the practice of the Brampton court office to hear *ex parte* matters, and the Solicitor was asked to leave the motion materials for a Judge. Thereafter, the Solicitor attempted to confirm the granting of the order by phone, with no success. On November 18, 1994, the Solicitor was finally advised by the Brampton court office that Ms. Thomas' supporting affidavit had not been commissioned. The Solicitor attended at the court office that day, commissioned the affidavit and waited for the order to be granted.

6. Meanwhile, Ms. Thomas was of the understanding that the order was to have been taken out on November 10, 1994. When Ms. Thomas was unable to reach the Solicitor with respect to the outcome of the motion, she called the Brampton court office on November 18, 1994 and was advised by a court employee that the motion had been rejected as the supporting affidavit had not been sworn. In fact, as indicated above, the order was granted that day.

7. By letter dated November 18, 1994 (Tab 1, Document Book), Ms. Thomas complained to the Solicitor. Ms. Thomas requested a response from the Solicitor.

8. Meanwhile, by letter dated November 17, 1994 (Tab 2, Document Book), the Solicitor wrote to Ms. Thomas as follows:

- (a) the solicitor/client relationship was not working out - the Solicitor enclosed Ms. Thomas' file;
- (b) Ms. Thomas had been disruptive to the Solicitor's office by dropping in without an appointment and by calling the Solicitor at home;
- (c) the Solicitor had called Ms. Thomas on November 4, 1994 regarding her financial statement but Ms. Thomas was not available;
- (d) the Petition for Divorce, Financial Statement, Affidavit and Notice of Motion were prepared by the Solicitor and executed by Ms. Thomas on November 9, 1994;
- (e) the Solicitor called the court on six occasions and was unable to find out whether or not the Order had been signed; and
- (f) the Solicitor enclosed her account for services.

9. By a separate letter dated November 18, 1994 (Tab 3, Document Book), Ms. Thomas made a complaint to the Law Society regarding the Solicitor's handling of her matrimonial matter.

10. By letter dated November 21, 1994 (Tab 4, Document Book), Ms. Thomas advised the Solicitor that her retainer had been terminated, and instructed the Solicitor to prepare her file for pick up by the following afternoon.

26th September, 1996

11. By letter dated November 27, 1994 (Tab 5, Document Book), Ms. Thomas wrote to the Solicitor requesting the return of her file. Ms. Thomas stated that she had called the Solicitor's office and was advised that her file had been mailed to her. However, Ms. Thomas had not received the file, accordingly Ms. Thomas again requested the Solicitor to prepare the file for pick up.

12. By letter dated November 28, 1994 (Tab 6, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Thomas' letter dated November 18, 1994 and requesting her comments within two weeks. The Solicitor did not respond.

13. On December 15 and 20, 1994, the Law Society called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone messages left for the Solicitor are contained at Tabs 7 and 8 of the Document Book.

14. By registered mail dated December 22, 1994 (Tab 9, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received by January 9, 1995, the matter would be referred to the Chair of the Discipline Committee.

15. By letter dated January 17, 1995 (Tab 10, Document Book), the Solicitor responded to the Law Society as follows:

- (a) she had met with Ms. Thomas on November 1, 1994 and was instructed to obtain a non-dissipation order;
- (b) she advised Ms. Thomas that she would have to complete a financial statement before the Solicitor could commence the action;
- (c) Ms. Thomas was an extremely demanding client and attended at the Solicitor's office without an appointment on at least four occasions and called the Solicitor at home on at least two occasions; and
- (d) she had obtained the order and delivered Ms. Thomas' file to her new solicitor.

16. By letter dated January 27, 1995 (Tab 11, Document Book), the Law Society asked the Solicitor to provide an explanation with respect to the facts surrounding the returning of Ms. Thomas' file. The Solicitor did not respond to the Law Society's letter.

17. On April 27, 1995, the Law Society attempted to contact the Solicitor by telephone at her office, but was advised by the receptionist that the Solicitor no longer practised from that office. The Law Society was given a forwarding telephone number for the Solicitor. The Law Society called the Solicitor at the new telephone number and left a message for her. A copy of the transcribed and handwritten notes of the telephone communications are contained at Tab 12 of the Document Book.

18. By letter dated May 17, 1995 (Tab 13, Document Book), the Law Society requested the Solicitor to provide an explanation for her failure to respond to Ms. Thomas' communications and for the discrepancy regarding the delivery of the file. The Solicitor did not respond.

19. By registered mail dated July 17, 1995 (Tab 14, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

20. As at today's date, the Solicitor advises that it was an oversight that Ms. Thomas' file was not returned to her in November, 1994. The Solicitor further states that the file was delivered to Ms. Thomas' new solicitor on November 30, 1995.

26th September, 1996

- Particular 2(b) She failed to respond to communications from Diane Daly, a solicitor, regarding her client, Ann Litavski.
- Particular 2(c) She failed to reply to the Law Society regarding a complaint by Ann Litavski despite letters dated May 24, 1995 and July 17, 1995.

21. In or about 1991, the Solicitor was retained by Ann Litavski on a Legal Aid Certificate to prepare a separation agreement. A copy of the Legal Aid Certificate is contained at Tab 15 of the Document Book. The Solicitor was subsequently instructed by Ms. Litavski to commence divorce proceedings on her behalf.

22. The Solicitor also had carriage of the sale of the matrimonial home of Mr. and Mrs. Litavski. The transaction closed on January 14, 1994 at which time the Solicitor held the amount of \$187,896.91 in her trust account at the direction of Mr. Litavski's solicitor. The Solicitor provided an account and accounting to Mr. & Mrs. Litavski dated January 19, 1994 (Tab 16, Document Book), with respect to the above transaction.

23. Thereafter, Ms. Litavski called the Solicitor several times to inquire about the status of her case. The Solicitor did not return the calls. Ms. Litavski then retained another solicitor, Diane Daly, to represent her.

24. By letter dated May 26, 1994 (Tab 17, Document Book), Ms. Litavski wrote to the Solicitor requesting her file and an updated account. Ms. Litavski expressed concern about the Solicitor's failure to return her calls since May 1, 1994. A copy of Ms. Litavski's letter was copied to the Law Society.

25. By letter dated June 22, 1994 (Tab 18, Document Book), the Law Society wrote to the Solicitor enclosing a copy of Ms. Litavski's letter dated May 26, 1994 and requesting her comments within two weeks. The Solicitor did not respond.

26. On July 13 and 20, 1994, the Law Society called the Solicitor and left messages for her to return the calls. The Solicitor did not return the calls. A copy of the transcribed and handwritten notes of the telephone messages are contained at Tab 19 of the Document Book.

27. By registered mail dated August 4, 1994 (Tab 20, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Law Society's letter was signed for and delivered on August 5, 1994.

28. By letter dated August 23, 1994 (Tab 21, Document Book), the Solicitor advised the Law Society as follows:

- (a) although she had not spoken personally with Ms. Litavski, her secretaries had spoken with Ms. Litavski on at least five occasions;
- (b) Ms. Litavski requested her file on or about May 8, 1994, at which time she was advised that the bulk of her file was already in her possession and that the remainder of the file could be picked up after the Solicitor had had an opportunity to prepare an account;
- (c) the Solicitor was served with a Notice of Change of Solicitors by Ms. Daly on May 19, 1994; and
- (d) due to her involvement in an unrelated custody trial, the Solicitor was unable to prepare Ms. Litavski's account, although she nevertheless released Ms. Litavski's file to her.

29. In or about November, 1994, the Solicitor received a copy of an Order dated November 10, 1994, requiring the proceeds of the sale of the matrimonial home to be divided into two equal shares, one share to be paid to Ms. Daly in trust for Ms. Litavski. By letter dated November 18, 1994 (Tab 22, Document Book), Ms. Daly wrote to the Solicitor requesting that she deliver Ms. Litavski's share of the proceeds of the matrimonial home.

30. The Solicitor delivered a cheque to Ms. Daly's attention.

31. By letter to the Solicitor dated November 21, 1994 (Tab 23, Document Book), Ms. Daly confirmed receipt of a cheque representing Ms. Litavski's share of the proceeds, less \$8,790.74 on account of the Solicitor's legal fees. Ms. Daly requested an account from the Solicitor and reminded her that the client was on a Legal Aid Certificate. Ms. Daly asked the Solicitor to hold the funds in trust until the matter was resolved. The Solicitor did not respond.

32. By letter dated November 22, 1994 (Tab 24, Document Book), Ms. Daly again asked the Solicitor to provide to her an accounting of the monies held from the sale of the matrimonial home. The Solicitor did not respond.

33. By letter dated November 22, 1994 (Tab 25, Document Book), Ms. Daly advised the Solicitor that Ms. Litavski was disputing the Solicitor's account on the grounds that she had been on a Legal Aid Certificate throughout most of her retainer with the Solicitor and had a verbal agreement with the Solicitor that she would be charged the Legal Aid rate throughout. Ms. Daly requested confirmation that the Solicitor continued to hold the monies in trust. The Solicitor did not respond.

34. After the passage of time, the Solicitor responded to Ms. Daly following which the parties scheduled and participated in an assessment of the Solicitor's account. The Assessment Officer made an order in favour of Ms. Litavski and the Solicitor's account was reduced, resulting in monies owing to Ms. Litavski. The Solicitor has repaid Ms. Litavski who has confirmed that she is satisfied, and that it is her request that the Complaint be withdrawn (Tab 26, Document Book).

35. By letter dated May 24, 1995 (Tab 27, Document Book), the Law Society wrote to the Solicitor requesting a response to Ms. Daly's inquiries about the proceeds of the sale of the matrimonial home. The Solicitor did not respond.

36. By registered mail dated July 17, 1995 (Tab 14, Document Book), the Solicitor was reminded of her professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if her response was not received within seven days, the matter would be referred to the Chair of the Discipline Committee. The Solicitor did not respond.

V. PRIOR DISCIPLINE

37. On September 27, 1990, the Solicitor was Reprimanded in Committee for failing to reply to the Law Society. The Solicitor provided an Undertaking to reply promptly to communications from the Law Society, clients and other solicitors.

26th September, 1996

38. On August 20, 1991, the Solicitor was Reprimanded in Committee for failing to comply with her personal undertaking dated November 29, 1985 to obtain and register a Release of Vendor's Lien, failing to comply with reasonable promptness with her agreement to write to Canada Mortgage and Housing Corporation to obtain a letter indicating the vendor's lien referred to in her undertaking was of no force or effect, and misleading the Law Society by advising the Society by correspondence dated January 29, 1990 that she had caused a letter to be written of the same date to the Canada Mortgage and Housing Corporation when in fact she did not write to the Corporation until April 4, 1990.

DATED at Toronto, this 16th day of April, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that:

1. the Solicitor be suspended for a period of six months, such suspension to commence February 22, 1996 and continue thereafter until a medical opinion has been submitted to the Secretary of the Law Society that the Solicitor is fit to practise;
2. at the conclusion of the suspension, the Solicitor be supervised by a solicitor approved by the Law Society for a further period of six months;
3. the Solicitor give her Undertaking to continue to attend AA as long as is necessary.

REASONS FOR RECOMMENDATION

The Solicitor has been in practice since 1979 and has been in sole practice for most of that time. She has been reprimanded in Committee on two previous occasions for conduct similar to that set out in the Agreed Statement of Facts. The Solicitor's problems appear to have been caused by alcoholism, for which she has sought treatment and has expressed a firm resolve to commit herself to ongoing treatment and vigilance to avoid a recurrence of problems with clients.

The Solicitor had excellent character references from other lawyers in her community who attest to her ability as a barrister.

In view of her past discipline history, the Committee felt that a suspension was warranted, with a further period of supervision as recommended by joint submission of the Society and counsel for the Solicitor.

Emily June McAskie was called to the Bar on April 6, 1979.

ALL OF WHICH is respectfully submitted

DATED this 29th day of May, 1996

Jane Harvey, Chair

There were no submissions, the finding was confirmed and the Report adopted.

26th September, 1996

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 6 months, such suspension to commence February 22nd, 1996 and continue thereafter until a medical opinion is submitted to the Secretary that the Solicitor is fit to practise. Further, that the solicitor be supervised by a solicitor approved by the Society for a period of 6 months at the conclusion of the suspension and give an Undertaking to continue to attend AA as long as necessary.

Both counsel made submissions in support of the recommended penalty.

Ms. Cohen advised that all the conditions had been met.

It was moved by Mr. Millar, seconded by Mr. Cole that the recommended penalty be adopted and that the solicitor continue to be supervised by Mr. Turingia for a period of 6 months.

Carried

Re: Laura Ann KELL - Mississauga

The Secretary placed the matter before Convocation.

Messrs. Topp, Bobesich and Marrocco and Ms. Carpenter-Gunn withdrew for this matter.

Mr. Glenn Stuart appeared for the Society. Ms. Shenda Tanchak appeared as agent for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 29th February, 1996, together with the Affidavit of Service addressed to the solicitor at 5668 South Street, Halifax sworn 15th April, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 12th April, 1996 (marked Exhibit 1) together with the Report and Affidavit of Service addressed to the solicitor at 20 Pine Avenue North, Mississauga sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor on 20th March, 1996 (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

Frank Marrocco, Chair
Gordon Bobesich
Kim Carpenter-Gunn

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

Glenn Stuart
for the Society

LAURA ANN KELL
of the City
of Mississauga
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 28, 1995

26th September, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On June 1, 1995 Complaint D152/95 was issued against Laura Ann Kell alleging that she was guilty of professional misconduct.

The matter was heard in public on November 28, 1995 before this Committee comprising Frank Marrocco, Q.C., Chair, Gordon Bobesich and Kim Carpenter-Gunn. The Solicitor did not attend the hearing nor was she represented. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D152/95

2. a) she failed to file with the Society on or before November 30, 1994, a certificate in the form prescribed by the Rules, thereby contravening Section 16(3) of Regulation 708 made pursuant to the Law Society Act.

FINDING OF THE COMMITTEE

The Committee received and accepted the evidence of Ms. Irene Andrighetti, the Supervisor - Annual Filings, for the Law Society's Membership Department. Ms. Andrighetti's evidence established the following facts regarding Laura Ann Kell. Ms. Kell was called to the Bar on February 7, 1992. Her last annual filing was made for the fiscal period ending November 30, 1993. At this time the Solicitor only filed a Form 2. The Solicitor made no filing for the fiscal period ending November 30, 1994. A Notice of Default was sent to the Solicitor by ordinary mail on February 8, 1995 and a copy of this notice was made an exhibit in these proceedings. This notice was returned and marked "moved". No further steps were taken by the Membership Records Department in the absence of a forwarding or current address. The Solicitor had not made her 1994 filing at the time of this hearing on November 28, 1995.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Laura Ann Kell be Reprimanded in Convocation if the filings are made before the matter is heard in Convocation, failing which, that the Solicitor be suspended for a period of thirty days and indefinitely thereafter until the filings are made, such suspension to take effect after the conclusion of any administrative suspension.

REASONS FOR RECOMMENDATION

The Solicitor was called to the Bar on February 7, 1992. She has no previous discipline history and she has been suspended indefinitely since March 9, 1994 for the non-payment of her annual fee.

The Committee was satisfied that the Solicitor had in fact left the practice of law. Unfortunately, the Solicitor had not taken care to ensure that the appropriate filings accompanied her departure and thus the Society could not conclude that her legal affairs were left in a satisfactory manner.

There were no unusual aggravating or mitigating factors and thus the Committee felt compelled to recommend the penalty normally imposed in this type of case.

ALL OF WHICH is respectfully submitted

DATED this 29th day of February, 1996

Frank Marrocco, Q.C. Chair

Mr. Stuart advised that the solicitor was served in accordance with the Act.

Ms. Tanchak agreed that service has been effected.

There were questions from the Bench.

It was moved by Mr. Carey, seconded by Mr. Cole that the finding of misconduct be set aside and that a letter of caution be sent to the solicitor from the Treasurer or Secretary.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Millar but failed for want of a seconder that the finding be set aside and referred back to a new Committee as an Invitation to Attend.

The Carey/Cole motion was voted on and adopted.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision to set aside the finding of professional misconduct and that a letter of caution would be sent to the solicitor from the Treasurer.

Re: David John PARSONS - Frankford

The Secretary placed the matter before Convocation.

Mr. Carey withdrew for this matter.

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

26th September, 1996

Convocation had before it the Report of the Discipline Committee dated 10th July, 1996, together with the Affidavit of Service sworn 19th July, 1996 by Louis Katholos that he had effected service on the solicitor on 15th July, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas J. P. Carey, Chair
Jane Harvey
Shirley O'Connor

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

Georgette Gagnon
for the Society

DAVID JOHN PARSONS
of the Town
of Frankford
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 27, 1995 and
March 14, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 6, 1994 Complaint D313/94 was issued against David John Parsons alleging that he was guilty of professional misconduct.

The matter was heard in public, with the exception of a psychiatric report which was received in camera, on June 27, 1995 and March 14, 1996 before this Committee comprising Thomas J. P. Carey, Chair, Jane Harvey and Shirley O'Connor. The Solicitor did not attend, nor was he represented by counsel, on June 27, 1995. He attended the hearing and represented himself on March 14, 1996. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D313/94

2. a) he misappropriated \$10,438. 95;
b) he failed to produce his books, records, and client files for inspection in accordance with Sections 9 and 18 of the Law Society Act;

26th September, 1996

- c) he failed to comply with an Order of Convocation that he suspend his practice for failure to pay his annual membership fees for the period May 1 to June 11, 1993; and
- d) he abandoned his law practice on or about December, 1993.

Evidence

The evidence before the Committee included the following Agreed Statement of Facts:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D313/94 and is prepared to proceed with a hearing of this matter on June 7, 1995.

II. IN PUBLIC/IN CAMERA

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

III. COMPLAINT

3. It is alleged that the Solicitor:

- (a) misappropriated \$10,438.95;
- (b) failed to produce his books, records, and client files for inspection in accordance with Sections 9 and 18 of the Law Society Act;
- (c) failed to comply with an Order of Convocation that he suspend his practice for failure to pay his annual membership fees for the period May 1 to June 11, 1993;
- (d) abandoned his law practice on or about December 1993.

III. ADMISSIONS

4. The Solicitor has reviewed Complaint D313/94 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 as hereinafter stated constitute professional misconduct.

IV. BACKGROUND

5. The Solicitor was called to the Bar in 1979. He practised as a sole practitioner in Frankford, Ontario and the surrounding area.

6. In October 1993, a Discipline Committee made a finding of professional misconduct against the Solicitor for failing to maintain sufficient funds on deposit in his trust account and for failure to file forms 2/3 for the fiscal year ending December 31, 1991.

7. On January 27, 1994, the Solicitor was to be Reprimanded in Convocation. The Solicitor did not appear before Convocation on that date and was suspended indefinitely until he appeared before Convocation to be reprimanded and filed the required forms. (Tab 48, Document Book).

8. The Solicitor has not appeared before Convocation nor filed the required forms and remains suspended.

26th September, 1996

V. SUMMARY OF FACTS

9. The following chart summarizes the facts in this matter:

DATE	EVENT	COMMENT
June 3, 1992	Law Society Examiner commenced spot audit of the Solicitor's practice	<ul style="list-style-type: none">- books and records were five months in arrears- co-signing was placed on the Solicitor's trust account and two existing special trust accounts
September 29, 1992	Counsel Brief prepared by Law Society Examiner	
June 18, 1993	Law Society received a letter from Wendy Munro (the Solicitor's former secretary) (Tab 2, Document Book)	<ul style="list-style-type: none">- Ms. Munro suggested that the Solicitor may have been misapplying client funds
September to December 1993	Law Society attempted to audit the Solicitor's books and records. Several additional complaints were received against the Solicitor. On November 1, 1993, the Solicitor was suspended for non-payment of annual fees.	<ul style="list-style-type: none">- several unsuccessful attempts were made to obtain access to the Solicitor books and records (see "Failure to produce Books and Records" below)

DATE	EVENT	COMMENT
December 1993	<p>An Order was granted under Section 43 of the Law Society Act for the Staff Trustee's office to take over the Solicitor's practice. (Tab 1, Document Book)</p> <p>The Affidavit of the Law Society's Trustee sets out numerous instances of clients being unable to contact the Solicitor and disclosing that the Solicitor had abandoned his practice. (Tab 49, Document Book)</p>	<p>- Mr. Rick Rolston of Belleville was appointed agent for the Law Society</p>
February 4, 1994	An auditor attended Mr. Rolston's office to inspect the Solicitor's books and records	<p>The auditor found that:</p> <ul style="list-style-type: none"> - trust reconciliations had not been prepared since April 1993 - trust deposit books could not be located for deposits after July 19, 1993 - there was no current trust list - there were no current client ledgers
February 8, 1994	Auditor attended the Solicitor's office and obtained some relevant documents	
February 17, 1994	Auditor attended the LPIC adjuster's office in Kingston and spoke to the Solicitor	<p>- the claims against the Solicitor were discussed with him</p>

MISAPPROPRIATION OF CLIENT FUNDS - \$10,438.95

10. The following is a chart setting out the total reported misappropriations of the Solicitor as at December 31, 1993:

TOTAL REPORTED MISAPPROPRIATION	
Mixed Trust Account	
Teresa Phillips	\$50,500.00
Welling Infants	13,000.00

TOTAL REPORTED MISAPPROPRIATION	
Funds required to be held in trust	63,500.00
Actual balance in mixed trust account at December 31, 1993	57,081.05
Amount of reported misappropriation - (Trust Account)	\$ 6,418.95
General Account	
Estate of Virge Terasmae	\$ 975.00
Estate of Priscilla Dracup	2,175.00
Ruth Cook	375.00
Jason Sparks	495.00
Client funds inappropriately held in general account	4,020.00
Actual balance in the general account at December 31, 1993	0.00
Amount of reported misappropriation - General	4,020.00
Total Reported Misappropriation for Both Accounts	\$10,438.95

11. The Law Society's auditor reviewed several client files that represented a pattern of behaviour by the Solicitor evidencing misappropriation of client funds.

12. The full extent of the Solicitor's misappropriation could not be determined due to the lack of accounting records and trust reconciliations. As at December 31, 1993 the balance in the Solicitor's trust account was \$57,081.05. The auditor's review of two files, Teresa Phillips and the Welling infants, found that the balance in the trust account should have been in the amount of \$63,500.00. (Tabs 3,4,5, Document Book)

13. The auditor found evidence of the improper transfer of funds from the trust account to the general account and improper deposit of trust funds directly into the Solicitor's general account by the Solicitor. (Tabs 3,4,5, Document Book)

Details of Reported Misappropriations Teresa Phillips

14. The Solicitor was retained by Teresa Phillips and her husband who were plaintiffs in a motor vehicle accident that was settled on August 4, 1993 for \$55,500.00 (Tabs 8 & 9, Document Book).

15. On July 9, 1993, the Solicitor confirmed to Mr. and Mrs. Phillips that they were to receive \$50,500.00 from the total settlement of \$55,000.00 (Tab 7, Document Book).

26th September, 1996

16. The settlement monies of \$55,000.00 was deposited into the Solicitor's trust account on August 27, 1993 in escrow pending the defendants' receipt of a court order approving the settlement claims of the infant plaintiffs and dismissing the action (Tabs 10 & 13, Document Book).

17. On August 27, 1993 the Solicitor issued a final account to the Phillips for \$5,745.48 (Tab 15, Document Book), that was paid to the Solicitor on August 27, 1993 (Tab 14, Document Book).

18. Contrary to the conditions of escrow, the Solicitor transferred funds from his trust bank account to his general bank account on account of fees and disbursements as follows:

Date	Amount	Document Book
August 27, 1993	\$5,745.48	Tabs 14 and 15
September 3, 1993	<u>3,673.14</u>	Tabs 16 and 17
	<u>\$9,418.62</u>	

19. On September 3, 1993, as shown above, the Solicitor issued a further account for \$3,673.14 and received payment the same day (Tabs 10 & 17, Document Book). This account is not legitimate.

20. On September 9, 1993, the Solicitor prepared another account addressed to Mrs. Phillips for a disbursement in the amount of \$13,655.40 (Tab 18, Document Book). The account states that the Solicitor paid Van Huizen and Schoelton in trust to discharge a private mortgage (Tab 19, Document Book). Mrs. Phillips did not receive a copy of this account nor is she aware of what the payment was for. Mrs. Phillips did not provide a direction to the Solicitor to make this payment.

21. On February 9, 1994 the Law Society's auditor contacted the firm of Van Huizen and Schoelton and was advised that the firm received a cheque from the Solicitor in the amount of \$13,655.40 for payment on behalf of Brian Wallis, another client of the Solicitors.

22. The Phillips did not receive any account fee billing or funds from the Solicitor.

23. The Solicitor stated to the Law Society's examiner that all fee billings were sent to Mrs. Phillips and funds were not released because infants were involved that required court approval. The Solicitor also stated that the information in his letter of July 9, 1993 to the Phillips was based on a proposed settlement of \$59,000.00.

24. The Solicitor's explanation is false. The Solicitor wrote to Mr. Cass, the solicitor representing the defendants on July 9, 1993 and accepted an offer of settlement in the amount of \$55,500.00 (Tab 8, Document Book). Mr. Cass states that he never had discussions with the Solicitor about a settlement in the amount of \$59,000.00.

25. The Solicitor should have trust funds in his account on behalf of Mrs. Phillips in the amount of \$50,000.00. As at December 31, 1993, the monies in the Solicitor's trust account totalled \$57,081.05. A trust shortage is evident when this amount is added to other clients' trust funds required to be held by the Solicitor.

26th September, 1996

Welling Infants

26. The Solicitor was retained by the Welling family who were plaintiffs in a motor vehicle accident lawsuit.

27. The claim settled for \$154,500.00. (Tab 20, Document Book)

28. The settlement monies were deposited into the Solicitor's trust account on July 23, 1992. Settlement funds of \$112,874.51 were paid out to the two adult plaintiffs on the same day and full and final releases executed. (Tab 21, Document Book)

29. The flow of settlement funds in and out of the Solicitor's trust account is as follows:

<u>Description</u>	<u>Date</u> <u>Paid/Received</u>	<u>Amount</u>
Amount paid into the Solicitor's Trust Account from the insurance company	July 23, 1992	\$154,500.00
Amounts paid from the Solicitor's Trust Account re: the Welling file:		
David Parsons - account	July 30, 1992	(13,000.00)
CIBC - discharge Wellings Demand Loan	July 30, 1992	(15,625.49)
Debra Ann Welling	July 30, 1992	<u>(112,874.51)</u>
Balance in Trust Account		13,000.00

30. The Solicitor prepared draft material for court approval of the infant settlement of \$6,500.00 per child. (Tabs 24,27,28, Document Book)

31. On October 23, 1993, the solicitor for the defendants wrote to the Solicitor asking whether the infant settlement had been approved by the court (Tab 25, Document Book). The Solicitor did not reply to this letter.

32. The Solicitor did not file the application with the court in Belleville.

33. The Solicitor has not paid the infant settlement funds into court as required nor has he forwarded the funds to the Wellings.

34. The Solicitor's last trust reconciliation dated April 30, 1993 (Tab 26, Document Book) indicates that the sum of \$13,000.00 is being held in trust for the Welling infants. The Solicitor's cancelled trust cheques after April 30, 1993 indicate that the Solicitor made no payments on the Welling file.

COMPENSATION RECEIVED FROM LAWYERS FUND FOR CLIENT COMPENSATION

35. Both Teresa Phillips and the Wellings have received grants of \$50,500.00 and \$13,000.00 respectively from the Lawyers Fund for Client Compensation in respect of their losses.

26th September, 1996

CLIENT FUNDS MISAPPROPRIATED FROM THE SOLICITOR'S GENERAL ACCOUNT

Estate of Virge Terasmae

36. Mr. Ilmar Terasmae retained the Solicitor to obtain Probate and transfer land in connection with the Estate of Mrs. Virge Terasmae.

37. On November 12, 1992 the Solicitor issued a fee account to Mr. Terasmae that included \$1,004.12 in fees and \$1,020.88 in disbursements for a total fee of \$2,025.00. The disbursements included a probate application fee of \$975.00. (Tab 29, Document Book1)

38. The Solicitor's general account deposit books indicate that \$1,050.00 was received from this Estate account and \$975.00 was received from Mr. Terasmae on November 12, 1992. (Tabs 30 & 31, Document Book)

39. The court records indicate that the Solicitor did not apply for probate for the Estate of Mrs. Virge Terasmae.

40. The Law Society obtained a copy of a registered transfer of property from the Estate of Mrs. Virge Terasmae to Mr. Ilmar Terasmae prepared by the Solicitor. The signature of the transferors was obtained November 12, 1992 but the transfer was not registered until July 20, 1993. The second page of the transfer states:

Virge Terasmae, (the deceased) died on or about the 28th day of May 1992, having duly made her last will and testament, probate where it was granted to transfer as executor thereof by the Ontario Court (General Division) as #00637/93 on the first day of March 1993, and probate of which was duly registered in the Land Registry Office for the Registry Division of Hastings (21 as Instrument number 490023 on the 20th day of July 1993. (Tab 34, Document Book)

41. According to court records the probate numbers quoted by the Solicitor relate to the account of another of the Solicitor's clients, Mr. James Charles Bowman. (Tab 35, Document Book)

42. The sum of \$975.00 deposited into the Solicitor's general bank account was not transferred to his trust account or paid into court for the probate application.

43. As at December 31, 1993 there were no funds in the Solicitor's general account evidencing a misappropriation of client funds in the amount of \$975.00.

Estate of Priscilla Dracup

44. On December 29, 1993 and January 5, 1994, Mr. Wilfred Day, solicitor for Anne Matthews, executrix to the Estate of Priscilla Dracup, complained to the Law Society concerning the Solicitor. (Tabs 36 & 37, Document Book)

45. The Solicitor was retained by the Estate to obtain probate.

46. On August 9, 1993 the Bank of Montreal, Cobourg Branch, issued a cheque to the Solicitor for \$2,175.00 from the Estate account for probate fees based on a letter from the Solicitor.

47. The Solicitor's deposit book indicates that the sum of \$2,175.00 from the Estate account was deposited into the Solicitor's general account on August 10, 1993. (Tab 38, Document Book)

26th September, 1996

48. The Solicitor did not apply for probate of the Estate of Priscilla Dracup and there is no record of any probate application for the Estate in the court records.

49. The amount of \$2,175.00 deposited into the Solicitor's general account for payment of probate fees was not transferred to the Solicitor's trust account or paid into court for the probate application.

50. As at December 31, 1993 there were no funds in the Solicitor's general account indicating a misappropriation of client funds of \$2,175.00.

51. The Estate has received a grant from the Lawyers Fund for Client Compensation in respect of its loss.

Ruth Cook

52. On September 1993, the Solicitor was retained by Ms. Cook regarding the purchase of a restaurant from the Whalens. The Solicitor acted for both the purchaser and the vendor.

53. The Solicitor provided Mrs. Cook with a fee billing for 1993 that indicated a land transfer tax of \$325.00 was disbursed. (Tab 39, Document Book)

54. Subject to this account, the Solicitor transferred \$882.03 from his trust account to his general account for fees totalling \$444.05 and disbursements totalling \$433.00 that included \$325.00 for the land transfer tax and \$50.00 to register the deed. (Tab 40, Document Book)

55. The Solicitor did not register the transfer with the Land Registry Office from the Whelans to Ms. Cook nor did he pay the land transfer tax (Tab 41, Document Book). As at December 31, 1993 there were no funds in the Solicitor's general account evidencing a misappropriation of client funds of \$375.00.

Jason Sparks

56. In October 1993 Mr. Sparks and the Durants purchased a property from the estate of Arthur Ray. The Solicitor acted for the purchasers.

57. In a fee billing addressed to Mr. Sparks dated September 1993, the Solicitor indicated that land transfer tax of \$445.00 was disbursed. (Tab 42, Document Book)

58. Subject to this account, the Solicitor transferred \$1,270.93 from his trust account to his general account for fees totalling \$572.45 and disbursements totalling \$693.50 that included \$245.00 for land transfer tax and \$50.00 to register the deed. (Tab 43, Document Book)

59. The Solicitor did not register the transfer from the estate to Mr. Sparks and the Durants nor did he pay the land transfer tax (Tab 44, Document Book).

60. As at December 31, 1993 there were no funds in in the Solicitor's general account evidencing a misappropriation of client funds of \$495.00.

FAILURE TO PRODUCE BOOKS AND RECORDS

61. From September 27, 1993 to February 17, 1994, the Law Society's auditor attempted to obtain the Solicitor's books and records. The Solicitor did not produce his books and records to the auditor.

26th September, 1996

62. On February 17, 1994, the auditor attended a meeting with the Solicitor and insurance adjuster at which time the Solicitor produced some books and records that were found to be inadequate and not in compliance with the Regulation.

PRACTISING UNDER SUSPENSION

63. The Solicitor was suspended by order of Convocation for the period May 1 to June 11, 1993 for failure to pay his annual membership fees.

64. On May 13, 1993 the Solicitor completed a mortgage transaction in the amount of \$70,000.00 between Mr. and Mrs. Donald Davy and the Bank of Montreal (Tabs 45,46 & 47, Document Book).

ABANDONED LAW PRACTICE

65. On or about December 1993 the Solicitor abandoned his law practice. (Tab 49, Document Book)

DATED at Frankford, Ontario this 12th day of June, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that David John Parsons be granted permission to resign.

REASONS FOR RECOMMENDATION

The Committee is of the unanimous view that the Solicitor should be given permission to resign. The Committee is of the view that in all of the circumstances that have been brought to our attention, the interests of the Society will be protected by the termination of the Solicitor's right to practise. We have taken into account the psychiatric report of Dr. Conn, which was received in camera (Attachment A to this report). We have also taken into account the personal history of the Solicitor, his financial circumstances, both at the time of the offences and subsequent to them, including the devastation of being on welfare with his family, and more recently, finding work as a cab driver. The Committee also took account of the Solicitor's desire not to practise law at this time.

The Committee considered it to be of some relevance that the Solicitor has remained in the small community where he practised and where the misconduct occurred and has had to face the disdain of that community and the public humiliation, as compared with the anonymity that one can hide behind in a larger locale.

We have looked at the amount involved here and while it certainly is not an insignificant amount, the misappropriation being a little over \$10,000, it is a matter which we have looked at in terms of previous cases. There is obviously no threshold amount at which one's right to practise is terminated, but it is a factor which we considered.

The Solicitor has expressed his remorse in a clear and sincere fashion in the view of the Committee. He agreed to the misconduct and although aspects of his co-operation could have been more pronounced, the Committee is of the view that at most times he has not attempted to hide what he did and has taken responsibility for his actions.

26th September, 1996

David John Parsons was called to the Bar on May 9, 1979.

ALL OF WHICH is respectfully submitted

DATED this 10th day of July, 1996

Thomas J.P. Carey, Chair.

Ms. Budweth asked that the following amendments be made to the Report:

- page 4, paragraph 10. - Chart should be titled:
"Inability to satisfy Client Obligations"
- page 7, paragraph 21. - add the following words at the end of the sentence ".....which was a misapplication".

The amendments were not made.

The finding of professional misconduct was confirmed and the Report was adopted.

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

Both counsel for the Society and the solicitor made submissions in support of the recommended penalty and reference was made to the amendments and the solicitor's inability to meet his obligations.

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

It was moved by Mr. Topp, seconded by Ms. Eberts that the solicitor be suspended for a period of 24 months, to requalify upon his return to practice and to provide a medical report to the Secretary as to the solicitor's fitness to practise law.

It was moved by Mr. Adams and accepted by the mover and seconder that in addition to the 24 month suspension the solicitor repay the \$10,000 misappropriated within 36 months upon his returning to practice.

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

Counsel, the solicitor, the reporter and the public were recalled and asked for further submissions on the motion of a lesser penalty.

There were questions from the Bench.

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

The recommended penalty was adopted.

The Topp/Eberts motion was not put.

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

Convocation took a mid morning break.

26th September, 1996

Re: Lawrence Charissios DUCAS - Scarborough

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. Angeles withdrew for this matter.

Mr. Perrier appeared for the Society. Mr. Gover, Duty Counsel appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 25th June, 1996, together with the Affidavit of Service sworn 19th July, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 26th June, 1996 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (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

Harvey T. Strosberg, Q.C., Chair
Joan Lax
Nora Angeles

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

Neil Perrier
for the Society

LAWRENCE CHARISSIOS DUCAS
of the City
of Scarborough
a barrister and solicitor

Bois Wilson
for the solicitor

Heard: November 1st & 2nd, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REASONS FOR DECISION

INTRODUCTION AND OVERVIEW

1. Lawrence Charissios Ducas (the "Solicitor" or "Mr. Ducas") was called to the bar on April 7, 1982. He has admitted multiple acts of professional misconduct. At the conclusion of the hearing, the Committee announced its decision to recommend that Mr. Ducas be permitted to resign and that our reasons would follow.

2. While these reasons were being prepared, one member of the Committee, Ms. Joan Lax, was appointed a judge of the General Division. Thus, the reasons for decision are those of the remaining two members of the Committee.

26th September, 1996

Particular 2(a), Complaint D240/93

He delayed from February 3, 1993 to April 8, 1993, in transferring the file of his former client, Timothy J. Healey to his new lawyer, Elizabeth Anne Silcox.

Particular 5(a), Complaint D240/93

He failed to honour his Undertaking dated October 25, 1988 to reply to correspondence from the Society within three weeks from the date of his receipt of same; and to reply to telephone calls from the Society by the end of the next working day that he is in the office in that:

- (iv) He failed to provide a reply until April 8, 1993 to letters from the Society dated November 23, 1992 and March 16, 1993 and telephone messages left on January 15, 1993, February 8, 1993 and a telephone request on March 1, 1993 regarding a complaint by Timothy J. Healey.

3. On October 25, 1988, the Solicitor provided an Undertaking to the Law Society to respond promptly to communications from the Society.

4. In November, 1989, Mr. Healey retained the Solicitor to act as counsel in litigation arising from a real estate transaction. By letter dated October 14, 1992, Mr. Healey complained to the Law Society that despite numerous attempts on his part, he had experienced difficulty communicating with the Solicitor and that he had not heard from him since July 16, 1992. Mr. Healey also complained that the Solicitor had held trust funds for him since July 9, 1992. This complaint had no merit, because the Solicitor never received or held trust funds for Mr. Healey. The funds were with Mr. Healey's former solicitors. Communication with Mr. Healey was difficult because he lived on a small inaccessible island without telephone service. All communications from the Solicitor to Mr. Healey were by mail.

5. Before the Society began its investigation, the Solicitor wrote Mr. Healey by letter dated October 22, 1992 and responded to Mr. Healey's complaint. The Solicitor requested that Mr. Healey advise whether or not he wished to retain him in the action and requested a retainer of \$3,500.00. After receiving the Solicitor's letter, Mr. Healey was still not satisfied and asked the Society to continue its investigation.

6. The Society wrote the Solicitor on November 23, 1992 and telephoned him on January 15, 1993 and February 8, 1993. There was no response until the Solicitor's letter dated February 9, 1993. With this letter, the Solicitor forwarded to the Society a copy of a letter dated February 3, 1993 to him from Elizabeth A. Silcox advising that she had been retained by Mr. Healey. Accompanying Ms. Silcox's letter was a Direction, dated January 29, 1993, executed by Mr. Healey directing the Solicitor to forward his file to Ms. Silcox. The Solicitor advised the Society that he had misplaced his file and would respond to the remaining concerns in Mr. Healey's letter within 7 days. No response was received.

7. By letter dated February 23, 1993, Ms. Silcox requested that the Solicitor deliver Mr. Healey's file within 5 days.

8. On March 1, 1993, a Law Society staff employee telephoned the Solicitor. The Solicitor advised that he would forward his response to the Society by facsimile within a day or two. No response was received.

9. By letter dated March 15, 1993, Ms. Silcox advised that on March 4, 1993 she had received some documentation from the Solicitor. Ms. Silcox advised Mr. Healey that if she did not hear from the Solicitor by the end of March, she might herself lodge a complaint against him with the Society.

26th September, 1996

10. By registered letter dated March 16, 1993, the Law Society sent the Solicitor a copy of its unanswered letter of November 23, 1992. The Solicitor was reminded of his professional obligation to respond to communications from the Law Society. The Solicitor was requested to respond in writing within 7 days, or the matter would be referred to the Chair of the Discipline Committee for instructions. No response was received.

11. By letter dated March 23, 1993, Ms. Silcox confirmed her telephone advice from an employee of the Solicitor that Mr. Healey's file would be forwarded to her by March 24, 1993. Ms. Silcox did not receive the file by that date.

12. Instead, by letter dated March 24, 1993, the Solicitor advised Ms. Silcox that he had requested the return of Mr. Healey's file from off-site storage, but had not yet received it. The Solicitor also advised Ms. Silcox that he would personally review the closed files, notify her once the file had been located, and deliver it forthwith. Ms. Silcox did not receive the file.

13. By letter dated March 26, 1993, the Society reminded the Solicitor that Ms. Silcox had still not received his file and requested him to deliver his file to Ms. Silcox forthwith.

14. By letters dated April 5, 1993 and April 7, 1993, Ms. Silcox advised the Society that she had not yet received Mr. Healey's file.

15. By letter dated April 7, 1993, the Solicitor advised Ms. Silcox that he had found Mr. Healey's file. Ms. Silcox obtained it on August 8, 1995.

16. By letters dated April 8, 1993, the Solicitor responded to the Society's letters of March 16, 1993, and March 26, 1993.

17. The Solicitor has admitted that these facts establish professional misconduct. The Committee finds that these complaints have been established.

Particular 5(a), Complaint D 240/93

He failed to honour his Undertaking dated October 25, 1988 to reply to correspondence from the Society within three weeks from the date of his receipt of same; and to reply to telephone calls from the Society by the end of the next working day that he is in the office in that:

(iii) he failed to reply until April 9, 1993 to letters from the Law Society dated September 15, 1992 and February 15, 1993 and telephone messages on November 10 and February 8, 1993 regarding a complaint by Lawrence J. Burns.

18. By letter dated August 17, 1992, Mr. Lawrence J. Burns complained about the Solicitor to the Law Society. Mr. Burns had been retained by Mr. George Kokolakis, who had concerns about the Solicitor's accounting for fees and payments.

19. The Society wrote the Solicitor on September 15, 1992, February 15, 1993 and March 16, 1993 and telephoned him on November 10, 1992 and February 8, 1993. He did not respond until April 9, 1993.

20. Then, by letter dated April 19, 1993, the Society wrote to the Solicitor requesting further information. The Solicitor failed to respond to this letter.

21. The Solicitor has admitted that these facts, too, constitute professional misconduct. The Committee concludes that this complaint has been established.

26th September, 1996

Complaint D 452/93

In the course of acting for his client, Christos Papadimitriou, in a personal injury claim, he misapplied funds delivered to him in trust in the amount of \$650.00 by Royal Insurance for payment of a medical report by applying the funds in partial payment of his outstanding account for legal services dated January 3, 1992.

Particular 5(a), Complaint D 240/93

He failed to honour his Undertaking dated October 25, 1988 to reply to correspondence from the Society within three weeks from the date of his receipt of same; and to reply to telephone calls from the Society by the end of the next working day that he is in the office in that:

- (i) he failed to reply until August 19, 1993 to letters from the Society's Complaints department regarding a complaint by T. H. Rachlin despite letters dated April 27, May 31, June 25, 1993 and telephone messages left on May 5 and May 21, 1993.

22. In November, 1990, Mr. Christos Papadimitriou retained the Solicitor to prosecute a personal injury action. On August 2, 1991, the Solicitor wrote to Mr. Papadimitriou's treating physician requesting a medical report. Before he would release the report, Dr. Rathbun demanded pre-payment of his \$650 fee.

23. By letter dated November 28, 1991, the Solicitor wrote to King Adjusters Ltd. requesting \$650 to be used to pay the physician's account. On December 24, 1991, the Solicitor received \$650 from King Adjusters Ltd.. The Solicitor deposited the \$650 into his general account and applied the \$650 to his account for services rendered. He did not pay the physician. The Solicitor then requested that Mr. Papadimitriou pay Dr. Rathbun's \$650 account.

24. By letter dated October 13, 1992, Ms. Maria Koumantaros, a law clerk with the firm of Rachlin and Wolfson, wrote to the Solicitor and advised him that Mr. Papadimitriou had retained Mr. Rachlin. Ms. Koumantaros requested that the Solicitor apprise her of the whereabouts of the \$650, because Dr. Rathbun had advised that he had not been paid. She sent follow-up letters to the Solicitor on January 4 and January 28, 1993. The Solicitor did not respond to any of the letters.

25. By letter dated March 19, 1993, Mr. Rachlin complained to the Society about the Solicitor.

26. By letter dated March 26, 1993, the Law Society forwarded to the Solicitor a copy of Mr. Rachlin's letter of complaint and requested a response within a period of two weeks.

27. By letter dated April 8, 1993, the Solicitor advised the Society that his file was being returned from storage and that he would correspond with the Society in 2 weeks. He did not do so.

28. By letter dated April 27, 1993, the Society requested the Solicitor's response within 7 days. The Solicitor did not respond to the letter.

29. On May 5, 1993 and May 21, 1993, a Law Society staff employee telephoned the Solicitor's office requesting a telephone response from the Solicitor. The Solicitor failed to respond.

26th September, 1996

30. By registered letter dated May 31, 1993, the Society forwarded to the Solicitor a copy of its unanswered letters of March 26 and April 27, 1993. The Solicitor was reminded of his professional obligation to respond to communications from the Society. The Solicitor was requested to provide his comments to the Society within 7 days, or the matter would be referred to the Discipline Committee for consideration. The Solicitor did not respond within the 7 days.

31. It was not until his letter dated August 19, 1993 that the Solicitor advised the Society that he had applied the \$650 to his account and had not used it to pay the physician's account.

32. The Committee finds on the basis of these facts that Particular 5(a) and Complaint D452/93 have been established.

Particular 3(a), Complaint D 240/93

He failed to cooperate with the Society's Audit and Investigation department in that he failed to:

- (i) respond to letters from the Audit and Investigation department dated April 28, May 20, June 7, June 25 and July 30, 1993 and a telephone message left on May 26, 1993 requesting the production of various client files and accounting records; and,
- (ii) comply with his agreement with the Society of August 9, 1993 to provide several client files and accounting records to the Society by August 11, 1993.

Particular 5(a)

He failed to honour his Undertaking dated October 25, 1988 to reply to correspondence from the Society within three weeks from the date of his receipt of same; and to reply to telephone calls from the Society by the end of the next working day that he is in the office in that:

- (ii) He has failed to reply to letters from the Audit and Investigation department dated April 28, May 20, June 7, June 25 and July 30, 1993 and a telephone message left on May 26, 1993.

33. By letter dated April 28, 1993, Mr. Howard Maker, counsel with the Department of Audit and Investigation, wrote to the Solicitor advising him that he and Mr. James Varro, Staff Lawyer with the Complaints department, wished to attend at his office to review 10 particular files. The Solicitor did not respond to this letter.

34. Mr. Maker wrote to the Solicitor on May 20, 1993, June 7, 1993, June 25, 1993, July 30, 1993 and telephoned him on May 28, 1993. The Solicitor did not respond to these inquiries.

35. On May 28, 1993, Mr. Maker telephoned the Solicitor's office. Mr. Maker was advised that the Solicitor was not in the office. Mr. Maker left a message. The Solicitor did not return the call.

36. On August 9, 1993, Mr. Varro and Mr. Maker met with the Solicitor at his office. The Solicitor undertook to deliver to the Society by August 11, 1993 a variety of documents, including outstanding replies to some of the complaint matters. He also agreed that in the future he would reply to the Society in accordance with the terms of his October 25, 1988 Undertaking.

26th September, 1996

37. On August 11, 1993, the Solicitor delivered to the Society a portion of the material which he had promised to deliver by August 9, 1993. Mr. Maker prepared a memorandum on August 11, 1993 detailing the information provided to the Society. The Solicitor did not provide any of the items requested in Mr. Maker's first three letters.

38. On August 16, 1993, Mr. Maker received a telephone call from the Solicitor's secretary. She advised Mr. Maker that the outstanding material would be delivered to the Society on August 18, 1993. No materials were received.

39. On August 19, 1993, Mr. Maker received another telephone call from the Solicitor's secretary. She advised that the Solicitor was attempting to collect the files and would forward them to the Society by August 20 or August 23, 1993.

40. On August 20, 1993, Mr. Varro received a box from the Solicitor containing a number of files and two letters. Mr. Varro prepared a memorandum dated August 20, 1993, listing the materials received from the Solicitor.

41. By letter dated September 3, 1993, Mr. Maker sent the Solicitor a list of the materials received by the Society and a list of the materials outstanding. The letter requested the Solicitor to provide the outstanding information. The Solicitor did not respond to the letter.

42. On December 14, 1993, the Solicitor swore an affidavit in which he responded to some of the outstanding issues. The Solicitor also advised that he would deliver to Mr. Varro the balance of the material on December 14, 1993.

43. By letter dated December 20, 1993, Mr. Maker confirmed that the Solicitor forwarded additional materials to Mr. Varro on December 14, 1993. Mr. Maker informed the Solicitor of two outstanding matters and requested the Solicitor's response. The Solicitor failed to respond to this letter.

44. The Committee concludes that on the basis of these facts that Particular 3(a) and Particular 5(a) have been established.

Particular 4(a), Complaint D 240/93

He failed to honour his Undertaking to the Law Society dated October 25, 1988 to file forms 2/3 within the time period required by Regulation 573 made under the Law Society Act by filing his Forms 2/3 for the fiscal year ended April 30, 1992 on May 21, 1993.

45. The Society forwarded to the Solicitor a Notice of Default in Annual Filing, dated November 3, 1992. This Notice related to the Solicitor's filings for the fiscal year ending April 30, 1992. The Solicitor did not respond.

46. The Solicitor did not file his Form 2 and Form 3 until May 21, 1993.

47. Accordingly, the Committee finds that Particular 4(a) has been established.

Particular 2(a), Complaint 283a/94

He acted in a conflict of interest in representing his client, Dennis Forret, who had potential claims against one Wayne Ross Kelly, when the solicitor had acted for the said Wayne Ross Kelly and had consulted him on the matter of the retainer of Dennis Forret.

26th September, 1996

48. In the summer of 1985, Dennis Forret purchased a 1980 Buick Regal from Wayne Kelly. In November 1985, Mr. Forret traded in the Buick on a new car purchased through Kingvar Motors. About six months later, Kingvar Motors contacted Mr. Forret and advised that it had been required to pay a lien of \$2,748.28 registered against the Buick and demanded reimbursement.

49. Mr. Forret then contacted Mr. Kelly. Mr. Kelly said that he would contact his solicitor, Mr. Ducas. Later, Mr. Forret contacted the Solicitor. The Solicitor advised Mr. Forret that he had indeed been contacted by Mr. Kelly about the Buick. Mr. Ducas advised Mr. Forret that Mr. Forret could pursue Mr. Kelly if he wished because of Kingvar Motors' claim.

50. On August 7, 1986, on behalf of Mr. Forret, the Solicitor wrote to the solicitor for Kingvar Motors and requested some time to investigate.

51. The Solicitor never met with Mr. Forret. All their communications were by telephone. In these conversations after his August 7, 1986 letter, the Solicitor assured Mr. Forret that he was drafting a letter which would state that the responsibility for the lien was Mr. Kelly's responsibility. He told Mr. Forret he had more or less nothing to worry about.

52. The Solicitor admits these facts and admits professional misconduct. The Committee concludes that Particular 2(a) has been established.

Particular 2(b), Complaint 283a/94

He failed to represent his client, Dennis Forret, in a conscientious, diligent and efficient manner by:

- (i) failing to properly advise him on the merits of a defence to an action commenced against the client by Kingvar Motors;
- (ii) failing to properly advise the client on steps taken in the litigation;
- (iii) failing to properly advise the client on the merits of claims against one Wayne Ross Kelly.

53. In June, 1987, Kingvar Motors commenced an action in the District Court against Mr. Forret. Mr. Kelly was not named as a defendant in the action. Mr. Forret delivered the claim to the Solicitor's office. The Solicitor prepared and filed a statement of defence on behalf of Mr. Forret. He did not take third party proceedings against Mr. Kelly. By a letter in March, 1988, the Solicitor advised Mr. Forret that a pre-trial had been scheduled and that the Solicitor would attend. Mr. Forret received two other letters from the Solicitor in March and April, 1988, but by mid-April Mr. Forret had sought new counsel, having by then realized that the Solicitor was also representing Mr. Kelly. In due course, Mr. Forret retained Mr. Greer as his counsel. By this time, Mr. Kelly had made an assignment in bankruptcy.

54. By letter dated March 14, 1988, the Solicitor advised Mr. Forret that in the opinion of the pre-trial judge his defence would fail. However, he also advised Mr. Forret that in his opinion there was a legitimate defence to the action. He again wrote to Mr. Forret on March 22, 1988 and April 5, 1988, advising of the trial date and enclosing a copy of an Offer to Settle from the Plaintiff.

55. At the trial on May 3, 1988, Mr. Forret and his wife were found liable for \$2,748.28, plus \$1,400 for interest and costs. Mr. Forret paid the judgment. Mr. Forret did not instruct the Solicitor to settle the action.

26th September, 1996

56. In due course, Mr. Forret received a dividend from the bankrupt estate of Mr. Kelly in the amount of about \$1,250 and a settlement through a small claims court action against Mr. Kelly in the amount \$1,000.

57. The Solicitor ought to have advised Mr. Forret to pay Kingvar Motors and to immediately sue Mr. Kelly. He did not do so.

58. The Committee concludes that this Complaint has been made out.

Particular 2(c), Complaint 283(a)

He failed to fulfil a financial obligation to his client, Dennis Forret, arising from his professional practice, namely, a judgment debt owed to the client based on a successful suit against the solicitor in negligence.

59. Mr. and Mrs. Forret sued the Solicitor in negligence, claiming a total of \$2,607.37 comprised of costs and interest they were required to pay in the previous action, the amount of the principal debt they did not recover from Mr. Kelly and Mr. Greer's legal fees. They were successful at trial in the Small Claims Court. The Solicitor's appeal was dismissed with costs.

60. In rendering judgment in favour of Mr. and Mrs. Forret, His Honour Judge Fitzpatrick stated as follows:

The defendant never provided the plaintiff with a written opinion as to the merits of the plaintiff's defence. The defendant never suggested a third party claim against Kelly, which should be done within 30 days of filing of the defence. The defendant's law firm became a creditor of Kelly's in the bankruptcy but never pursued any claims in the bankruptcy. The defendant never instructed the plaintiff to make a claim in the Kelly bankruptcy. The defendant put nothing in writing to the plaintiff regarding the Kingvar claim pertaining to the notice of readiness, discoveries or the notice of listing for trial. The Court finds there clearly was a conflict of interest by the defendant acting on the same matter for client Kelly and the plaintiff. The defendant should have immediately instructed the plaintiff to find another lawyer. Virtually nothing was done by the defendant between June of 1986 and June of 1987.

The Court...disagrees that there was any substantial defence for the plaintiff. The court finds the defendant should have instructed the plaintiff to immediately settle the Kingvar action, notwithstanding that the defendant should not even have acted in the matter for the plaintiff.

The Court finds the defendant was in a conflict of interest position and did not provide professional service to the plaintiff and this resulted in extra costs to the plaintiff.

61. The Solicitor has admitted professional misconduct and that this debt was not paid. The Committee finds that Particular 2(c) has been established.

Particular 2 A, Complaint D337a/94

MANION MORTGAGE TO ROYAL BANK 165 FERN AVENUE, TORONTO

- (1) Prepared for the clients and swore materially incomplete Land Transfer Tax Act affidavit
- (2) Breached s. 14(8)(c) of Regulation 708 by transferring monies from trust to pay legal fees prior to delivery of a billing or other written notification; and,

26th September, 1996

- (3) Breached s. 14(9) of Regulation 708 by transferring monies from trust to Battenleigh Management for the payment of legal fees;

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:

- i) the Royal Bank, by failing to lift an execution on title to the property prior to registering a first mortgage.

62. On December 8, 1992, the Royal Bank of Canada agreed to loan to Barbara Dillon, Margaret Yvonne Manion and Valentina Hwozdeckyj the sum of \$150,000 on the security of a first mortgage to be registered on title to 165 Fern Avenue (the "property"), registered in the names of Ms. Dillon and Ms. Manion.

63. As of December 8, 1993, the property was encumbered by four mortgages which were to be paid and discharged on closing.

64. The Solicitor was instructed to convey title from Ms. Dillon and Ms. Manion to Ms. Dillon, Ms. Manion and Ms. Hwozdeckyj. The Solicitor prepared and had each of them sign an incomplete Land Transfer Tax Act affidavit. On December 15, 1992, the Solicitor commissioned the incomplete affidavit. The transfer was made from the trustee in favour of the three beneficial owners with no consideration.

65. On December 17, 1992, the Solicitor learned of a writ of seizure and sale (the "execution") in favour of Household Financial Corporation ("H.F.C.") in the sum of \$5,875.91 plus costs.

66. On December 18, 1992, Jack Goodman, the solicitor for the execution creditors, wrote the Solicitor. He offered to lift the execution to permit new mortgage financing on the payment of \$4,000 plus legal fees and on the undertaking by the Solicitor to re-file the execution "immediately upon the closing of the transaction and provide the writer with confirmation of the same within twenty-four hours." The Solicitor agreed to these terms.

67. The Solicitor's secretary was provided with pay-out figures, which changed from time to time, and conveyed those to the broker and to the clients.

68. The transaction closed on December 18, 1992. The Solicitor registered a transfer from Ms. Dillon and Ms. Manion to Ms. Dillon, Ms. Manion and Ms. Hwozdeckyj and included the three Land Transfer Tax Act Affidavits. The Affidavits stated that the consideration for the transfer was "nil," because the transfer was from trustees (Dillon & Manion) to the beneficial owner (Hwozdeckyj) of a one-third interest in the property. The Solicitor also registered the mortgage to the Royal Bank.

69. On December 19, 1992, without rendering an account, the Solicitor paid the sum of \$3,500 from trust to his management company, Battenleigh Management. He explained that the transfer was towards his legal fees. The Solicitor stated that he was aware he was not permitted to take fees until an account was issued. He also said that he was unaware it was a breach of Regulation 708 to transfer funds directly from trust to his management company.

70. The Solicitor did not lift and re-file the execution until January 18, 1993.

26th September, 1996

71. On February 3, 1993, the Solicitor reported to the Royal Bank and to Ms. Dillon. The Solicitor also delivered an account to Ms. Dillon.

72. The Committee concludes that Particulars 2 A (1) (2) (3) and 2 L (1) are established.

B. GIBSON AND COYLE - PURCHASE OF 25 SHOTWELL STREET, WELLAND, ONTARIO

Particular 2 B

- (1) Breached his undertaking to the Ministry of Revenue regarding the use of Coyle's OHOSP funds; and
- (2) Swore a Land Transfer Tax Act affidavit backdated to November 12, 1990, and then improperly signed his secretary's name to it as commissioner.

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:
 - (ii) Gibson and Coyle, by failing to register the Land Transfer Deed in the names of both Gibson and Coyle and by failing to send a final reporting letter in a timely manner.

73. In September 1990, Mrs. Joyce Gibson and her daughter Ms. Judith Coyle agreed to purchase 25 Shotwell Street, Welland, Ontario ("property"). They arranged financing through a mortgage broker, Homestead Financial Ltd. ("Homestead"). Homestead's principal Gerry Mulholland referred Mrs. Gibson and Ms. Coyle to the Solicitor.

74. On October 1, 1990, Mrs. Gibson and Ms. Coyle retained the Solicitor to act on the purchase of the property and to act for First Line Trust ("First Line"). First Line agreed to provide financing. First Line wrote to the Solicitor confirming his retainer. But First Line's instructions were unclear as to whether Mrs. Gibson and Ms. Coyle, or Mrs. Gibson alone, were to be owner(s)/mortgagor(s). The Solicitor assumed that Mrs. Gibson and Ms. Coyle would be the purchasers and that one Jack Vanderwal would be the guarantor.

75. On November 12, 1990, Mrs. Gibson and Ms. Coyle went to the Solicitor's office to sign a variety of documents. There they met with Mr. Vanderwal and the Solicitor. The Solicitor prepared a Land Transfer Tax Act affidavit. The affidavit referred to the transaction as a purchase by Mrs. Gibson and Ms. Coyle. The affidavit was drafted in Ms. Coyle's name and was signed (but not sworn) by her. Both Mrs. Gibson and Ms. Coyle signed a variety of other documents prepared by the Solicitor to facilitate the closing of the transaction.

76. Ms. Coyle's contribution to the purchase of the property was to include \$2,022.90 from her Ontario Home Ownership Savings Plan ("OHOSP"). The Solicitor completed and signed the necessary form, undertaking to the Ministry of Revenue to hold the \$2,022.90 in trust and to use the money only for the purchase of Coyle's interest in the property.

77. On November 13, 1990, the Solicitor received \$2,022.90 from the OHOSP.

78. On or about November 14, 1990, the Solicitor prepared a draft mortgage without Ms. Coyle as mortgagor. The Solicitor caused Ms. Coyle's name to be deleted from the title documents on the basis of First Line's instructions. He did not obtain instructions from Ms. Coyle.

26th September, 1996

79. On November 16, 1990, the transaction closed. Monies used for the purchase included the OHOSP funds, although Ms. Coyle was not a purchaser and although this transaction breached the Solicitor's undertaking to OHOSP. The Transfer and Charge was registered on title. Mrs. Gibson became the sole owner. Ms. Coyle's name was crossed off the Transfer. The Transfer was accompanied by a Land Transfer Tax Act affidavit describing a transfer to Mrs. Gibson alone, Ms. Coyle's name having been crossed out. The affidavit was purportedly sworn by the Solicitor personally and purportedly commissioned by Ms. Mason on November 12, 1990. The Solicitor admitted that he in fact signed Ms. Mason's signature as commissioner. The affidavit could not have been sworn on November 12, 1990, because at that time the Solicitor understood that both Mrs. Gibson and Ms. Coyle were to purchase the property. On the registered mortgage, Mrs. Gibson is the only named mortgagor. Ms. Coyle's name had been deleted as a mortgagor and added as a guarantor, even though neither Ms. Coyle nor First Line had given instructions.

80. Before closing, the Solicitor deleted Ms. Coyle's name from the title documents because of First Line's instructions. He stated that Ms. Mason spoke to First Line and reported to him that First Line wanted Ms. Coyle's name removed from title. He said that this instruction was probably received after the draft documents were reviewed by the mortgagee. To accommodate, First Line deleted Ms. Coyle's name from the transfer. The Solicitor admitted that Ms. Mason did not swear his Land Transfer Tax Act affidavit, but that he had signed her name to it as commissioner, that the affidavit had not been sworn on November 12, 1990 as represented on the document and that Ms. Coyle had not agreed to be a guarantor of the mortgage.

81. The Solicitor did not inform Mrs. Gibson or Ms. Coyle of the mortgagee's instructions to remove Ms. Coyle from title. He suggested that normally Ms. Mason would do this. On November 9, 1989, First Line asked the Solicitor's office to have Ms. Coyle fill out an application form and that she could be an approved mortgagor. The Solicitor did not advise Ms. Coyle or Mrs. Gibson of this option. Ms. Coyle and Mrs. Gibson would not have agreed to take title in only Mrs. Gibson's name.

82. In mid-April, 1991, Mrs. Gibson received the Solicitor's reporting letter dated November 19, 1990. The letter advised that title was taken in the name of Mrs. Gibson only and said: "Please note that we have had to have Judith Coyle's name deleted from title as per instructions from the mortgagee." The Solicitor also prepared a Final Report on Title to the mortgagee. The report described Mrs. Gibson as the mortgagor and Ms. Coyle and Mr. Vanderwal as guarantors. This prejudiced Ms. Coyle because to obtain a tax credit she required the Solicitor's report evidencing that the \$2,022.90 had been used by her to purchase property.

83. The Solicitor admitted that the report was delivered some five months after closing. He indicated that his normal "target" for delivery of a report was two months after closing. He did not and could not provide any explanation for the lengthy delay in reporting until November 19, 1990.

84. On April 18, 1991, First Line wrote to the Solicitor asking, among other things, why Ms. Coyle had been registered as a guarantor without instructions from First Line. The Solicitor never replied to this letter. Yet, in April 1991, First Line received the Solicitor's final report showing Ms. Coyle as a guarantor. First Line, not having approved Ms. Coyle as guarantor, wrote to the Solicitor on April 18, 1991 requesting an explanation. He did not respond.

85. On August 22, 1991, the Solicitor registered a transfer from Mrs. Gibson to Mrs. Gibson and Ms. Coyle as joint tenants.

86. Ultimately, Mrs. Gibson received her tax credit.

26th September, 1996

87. Based on this evidence, the Committee concludes that Particulars 2 B (1) (2) and 2 L (ii) have been established.

Particular 2 C

LADHA PURCHASE FROM CHUNG - 4725 SHEPPARD AVENUE EAST, SUITE
1703, SCARBOROUGH, ONTARIO

- (1) Swore a Land Transfer Tax Act affidavit which falsely set out that the consideration for the transaction was the sum of \$163,500 when the actual consideration set out in the Agreement of Purchase and Sale, and the amount paid in cash on the transaction was the sum of \$220,000;
- (2) Breached s. 14 (8)(c) of Regulation 708 by transferring money from trust to pay legal fees prior to delivery of a bill or other written notification to the client; and,
- (3) Breached s. 15 of Regulation 708 by failing to maintain a client ledger that accurately discloses all trust receipts and disbursements made on behalf of the client.

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:

iii) Ladha, by undue delay in reporting to the client on the interim closing (4 months) and on the final closing (16 months).

88. Mr. Chung entered into an agreement to purchase a condominium being built for \$163,500.

89. Then, in August, 1988, before he closed, Mr. Chung agreed, with the builder's consent, to resell the condominium to Fatmas Ladha ("Mr. Ladha") for \$220,000.

90. The Solicitor, who was acting for Mr. Ladha, attended an "interim closing." Mr. Ladha was to pay the sum of \$35,000. According to correspondence found in the Solicitor's file, on July 31, 1989, the Solicitor wrote to the solicitors for the vendor, Lawrence Ltd., and delivered his trust certified cheque in the amount of \$20,875. Then, on August 2, 1989, he wrote to the solicitor for Mr. Chung and delivered his certified trust cheque in the amount of \$14,125. But neither the receipt nor the disbursement of these trust funds is recorded in the solicitor's records. The Solicitor is not able to locate his trust deposit book.

91. On December 1, 1989, approximately four months after the interim closing, the Solicitor sent Mr. Ladha a brief reporting letter and a statement of account.

92. March 30, 1990 was the date set for the final closing. According to the Solicitor's client ledger, on that date he received two separate cheques from Mr. Ladha: the first, a certified cheque drawn on a Bank of Nova Scotia account, in the amount of \$15,755.84; the second, an uncertified cheque drawn on a National Trust account in the amount of \$1,969.

93. The Solicitor then paid the sum of \$15,755.84 to the solicitor for Mr. Chung and paid the sum of \$1,404 for land transfer tax. The sum of \$565 remained in his trust account.

26th September, 1996

94. On April 2, 1990, Mr. Chung's purchase from Lawrence Ltd. and Mr. Ladha's purchase from Mr. Chung closed concurrently. The Solicitor provided a memo to his conveyancer which included the following information: "Note: The deed (is) coming from Lawrence Ave. Group. Do not amend the consideration - leave it the same."

95. Because Lawrence Ltd. had consented to Mr. Chung's sale to Mr. Ladha, the Transfer Deed recited Lawrence Ltd. as transferor and Mr. Ladha as transferee and the consideration of \$163,500.

96. Mr. Chung paid \$163,500 to Lawrence Ltd. but Mr. Ladha paid \$220,000 to purchase from Mr. Chung. The Transfer Deed has in the upper right hand corner "box (4) (Consideration)." The Solicitor placed a yellow post-it note on which he drew an arrow pointing to the sum of \$163,500 and wrote the words "Do not change."

97. The Solicitor swore a Land Transfer Tax Act affidavit deposing that the consideration for the transaction was \$163,500, of which only \$10,278 was "*monies paid or to be paid in cash.*" This affidavit was materially false because:

- (a) The Solicitor knew that Mr. Ladha had paid \$53,324.84 by cheque toward the purchase price;
- (b) The consideration for the transaction was \$220,000, not \$163,500; and
- (c) The mortgage was in the amount of \$153,222. The difference between the mortgage amount of \$153,222 and the total consideration deposited to by the Solicitor in the affidavit of \$163,300 was the sum of \$10,278. The "cash" component was \$53,324.84, not \$10,278.

98. The Solicitor said that, because this was a resale (colloquially known as a "flip"), he believed the consideration for the conveyance from the Lawrence Ltd. to Mr. Ladha to indeed be \$163,500. The difference, he thought, was Mr. Chung's "*premium.*" This explanation is erroneous in law and may well constitute wilful blindness.

99. According to the Solicitor's client ledger, on April 6, 1990, the Solicitor paid himself the \$565 remaining in trust before he delivered his account on April 20, 1990. About 16 months after the transaction closed, on July 22, 1991, the Solicitor finally reported to Mr. Ladha.

100. Based on this evidence, the Committee concludes that Particulars 2 C and 2 L have been established.

Particular 2 D

GUNTER PAWELSKI - MORTGAGE FORECLOSURE PROCEEDING - 1886 ROSEFIELD ROAD, PICKERING, ONTARIO

- (1) Breached s. 14 (1) and (3) of Regulation 708 on three separate occasions by depositing monies received from the client on account of fees for services not yet rendered and disbursements not yet made directly into his general account, instead of into his trust account;
- (2) Wrote a letter to the Law Society dated January 29, 1993 in reply to the client's complaint that was false and misleading as to his explanation for failing to take steps on behalf of the client.

26th September, 1996

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:

- (iv) Pawelski, by failing to complete a mortgage foreclosure proceeding and failing to reply to communications to his client in a timely manner; and by failing to remove an execution from title

101. In September 1991, Mr. Gunter Pawelski, who held a third mortgage, retained the Solicitor to commence foreclosure proceedings.

102. On September 13, 1991, the Solicitor issued a Statement of Claim.

103. On October 1, 1991, the Solicitor wrote Mr. Pawelski advising that he would soon obtain judgment in the amount of \$58,417.87. The land transfer tax payable on this amount was \$309.18, and he asked that Pawelski provide him with this sum. He also asked for the "agreed retainer of \$1,000."

104. On October 11, 1991, the Solicitor received the sum of \$500 from Mr. Pawelski. He deposited it into his general account instead of his trust account, although no account had yet been rendered.

105. On December 20, 1991, the Solicitor received a further \$500 from Mr. Pawelski which he deposited into his general account although again no account had yet been rendered.

106. Household Realty was an execution creditor. On December 23, 1991, Household sent a discharge of mortgage and a release to the Solicitor and had no further interest in the property. Inexplicably, the Solicitor did not register these documents.

107. On December 30, 1991, the Solicitor obtained a final order of foreclosure, judgment for the sum of \$60,266.42, possession and costs.

108. On January 20, 1992:

- (d) The Solicitor wrote to Mr. Pawelski to advise that judgment had been obtained and that the Certificate of the final order for foreclosure was being issued. He advised that the land transfer tax of \$352.66 was required to register the final order of foreclosure (actually, \$327.66 for land transfer tax plus \$25 for registration); and

- (e) The Solicitor issued an account.

109. On February 5, 1992, the Certificate of Order for Foreclosure was issued by the court.

110. On March 18, 1992, the Solicitor wrote to Mr. Pawelski. He advised that since Mr. Pawelski had not responded to him on this and other matters, he assumed that Mr. Pawelski no longer wished to proceed and he was closing out his file. He asked that Mr. Pawelski pay immediately an outstanding account of \$539.42.

111. On July 16, 1992, Mr. Pawelski wrote to the Solicitor, enclosing a cheque payable to Rendeiro, Ducas Associates in trust in the amount of \$892.08, being \$539.42 to pay the outstanding account and \$352.66 for land transfer tax.

112. On July 17, 1992, the Solicitor deposited the full amount of the cheque into his general account.

26th September, 1996

113. As the cheque was made out to the Solicitor in trust, it should have been deposited into the firm's trust account. The \$352.66 for land transfer tax had not yet been paid, and so should have remained in the trust account. The Solicitor asserts that this was a staff mistake.

114. On August 8, 1992, the Solicitor prepared the Document General and sent it to his conveyancer for registration. The document was not registered until April, 1993.

115. On August 10, 1992, the Solicitor transferred \$180 from his general account to his trust account and wrote a cheque for \$180 for the payment of land transfer tax. The "*consideration*" on the Transfer is listed as \$36,000, being the principal sum of the mortgage.

116. The Solicitor purportedly signed the Document General, Application to Amend Register and Land Transfer Tax Act affidavit on August 8, 1992. However, the Application to Amend Register and the affidavit in support of the Application were not prepared until September 29, 1992.

117. On September 25, 1992 and on October 20, 1992, Mr. Pawelski wrote to the Solicitor inquiring about the status of the proceeding. Because the Solicitor did not respond, Mr. Pawelski wrote to the Society on November 5, 1992.

118. On January 29, 1993, the Solicitor wrote to the Law Society responding to Mr. Pawelski's complaint. The Solicitor told the Society that he had advised Mr. Pawelski that the Certificate of Final Order of Foreclosure had been obtained. He advised the Law Society falsely that no further steps had been taken because Mr. Pawelski had failed to pay any money for the land transfer tax and that he was returning the necessary documents to the client so that the client could complete the registration himself.

119. On April 8, 1993, in response to the Society's further request, the Solicitor said that the Document General had been provided to the conveyancer in October, 1992 but had been returned for correction and that he had not yet gotten back the duplicate original. He did not explain why he had stated falsely that Mr. Pawelski had not paid the money for land transfer tax.

120. On April 21, 1993, the Solicitor caused the Document General to be registered and paid \$180 in land transfer tax.

121. On July 30, 1993, the Society wrote to the Solicitor asking why the documents had not been registered in February, 1992 and why the Household Trust execution remained on title. The Solicitor did not reply to this correspondence.

122. When asked about the extreme delay in the registration of the documents, the Solicitor explained that the documents "went back and forth on a number of occasions between him and his process server because of problems in properly completing the forms." He said that "there was no urgency," that he "was not inclined to proceed quickly" because Mr. Pawelski owed him fees for other services rendered and that if he had completed this matter, Mr. Pawelski would not have paid his outstanding accounts. In other words, by using this unregistered document as leverage, the Solicitor was trying to exert pressure on Mr. Pawelski to pay the outstanding accounts. This strategy or rationale provides no justification for failing to act diligently and conscientiously in Mr. Pawelski's best interests. To the contrary, it is an admission by the Solicitor of his intention not to act conscientiously and diligently in Mr. Pawelski's best interests.

123. The Committee concludes that Particulars 2 D and 2 L have been made out.

26th September, 1996

Particular 2 E

ALEX, MARIA AND GEORGE KOKOLAKIS

Maria Kokolakis MVA - June 5, 1985

- (1) On or about February 19, 1992, he misappropriated the sum of \$270.04, being interest earned on funds belonging to the client that had been held in trust by the Solicitor;
- (2) Prepared for the client and provided to the client for signature a release form which was blank as to material particulars;
- (3) Breached the following sections of Regulation 708:
 - (i) s. 14(8)(c) by transferring monies from trust to pay legal fees prior to delivery of a billing or other written notification;
 - (ii) s. 14(9) by transferring monies from trust to Battenleigh Management for payment of legal fees; and,
 - (iii) s. 15 by failing to maintain a client ledger that accurately discloses all trust receipts and disbursements made on behalf of the client.

124. Alex and Maria Kokolakis are husband and wife. George is the son of Mr. and Mrs. Kokolakis and lived with his parents. The Solicitor had a lengthy solicitor/client relationship with the Kokolakis family, although George generally communicated with the Solicitor on his own behalf and on behalf of his parents.

125. On June 5, 1985, Maria was involved in a motor vehicle accident. George, on behalf of Maria, retained the Solicitor in connection with the accident.

126. The Solicitor prosecuted the action appropriately and, after a pretrial, wrote a letter dated October 23, 1990 recommending settlement in the range of \$25,000 to \$27,500. Enclosed with this letter was a release. The release contained all the details with the exception of the settlement amount and the date of signing, which were left blank. The signature line was identified by a yellow "post-it note" in Ms. Maston's handwriting directing: "sign here both copies and return."

127. On October 29, 1990, Maria wrote to the Solicitor instructing him to settle the action on the basis that she would receive \$24,000 after all fees and disbursements.

128. On or about October 31, 1990, Maria returned to the Solicitor the release duly executed.

129. On November 2, 1990, the Solicitor wrote to Maria and George advising that the defendant had offered to settle for \$28,000, all inclusive of costs, recommending acceptance of this offer and stating that, "Separate to my compiling my analysis of total docketed time and total disbursements incurred that our account should not exceed \$5,000." This meant Marie would receive \$23,000 after all fees and disbursements.

130. Eventually, Maria contacted the Solicitor and instructed him to settle for \$28,000 if he could not get her a little bit more money. The Solicitor did not direct Maria to initial the insertion of the amount in the blank release, and he did not obtain written instructions authorizing the completion of the release by inserting the amount of \$28,000.

26th September, 1996

131. On November 13, 1990, the Solicitor completed the blank release by inserting or causing to be inserted the settlement amount of \$28,000. The solicitor ought not to have completed the document in this way without precise written instructions.

132. On November 23, 1990, the Solicitor received the \$28,000, deposited the \$28,000 in his trust account and properly recorded this trust deposit from the defendant's solicitor in his books and records.

133. On or about November 24, 1990, the Solicitor paid \$23,000 to purchase a Royal Trust GIC. He did not record the \$23,000 payment to Royal Trust in the client trust ledger.

134. On November 24, 1990, the Solicitor transferred \$5,000 from his trust account to Battenleigh Management, his management company. It was not until December 28, 1990 that the Solicitor issued his account for \$7,922.75. As \$5,000 had already been paid, the balance owing was \$2,922.75. This \$2,922.75 was paid by a December 31, 1990 transfer from the Solicitor's trust account to his general account.

135. On January 2, 1991, the Solicitor paid Maria \$20,077.25. Thus, the \$28,000 had been distributed as follows:

Maria	\$20,077.35
Battenleigh Management Co.	5,000.00
Solicitor	<u>2,922.75</u>
Total	\$28,000.00

136. On January 8, 1991, according to the ledger, the Solicitor received from the Royal Trust GIC the sum of \$270.04 in interest. He deposited it into his trust account.

137. This sum of \$270.04 belonged to Maria. Yet on February 19, 1992, the Solicitor transferred the \$270.04 from his trust account to his general account. He never accounted to Maria for the \$270.04. The Committee concludes, therefore, that the solicitor misappropriated this \$270.04.

138. The Committee concludes as well that Particulars 2 E (1) (2) and (3) have been made out.

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:

- (v) (a) George Kokolakis by failing to appear for the scheduled trial and by appearing late for his own motion, such that the court dealt with the matter before he arrived;
- (b) with respect to particular L(1)(v)(a) he also breached his duty to the court;

139. On September 28, 1987, the Attorney General for Ontario sued George Kokolakis in Small Claims Court demanding repayment of an OSAP loan. On February 3, 1988, George retained the Solicitor who then served a Statement of Defence. On May 13, 1988, the Solicitor wrote to George enclosing a copy of the Notice of Trial (trial scheduled for July 20, 1988) and requesting a \$350 retainer.

140. The trial was eventually scheduled for October 28, 1988, and by letter dated September 27, 1988, the Solicitor wrote to advise George of the trial date.

26th September, 1996

141. On the morning of October 28, 1988, the day scheduled for trial, the Solicitor called counsel for the plaintiff and advised that he was unable to attend the trial because he had to attend a Liquor Licence Board hearing in Hamilton. Plaintiff's counsel told the court of the Solicitor's request for an adjournment and of his willingness to pay costs. However, the judge refused the adjournment, proceeded with the trial and granted the plaintiff judgment in the amount of \$1,585, plus interest and costs.

142. On November 16, 1988, the Solicitor delivered a Notice of Motion returnable on January 9, 1989 and an affidavit seeking to set aside the default judgment and to restore the action to the trial list.

143. On December 7, 1988, the Solicitor's motion material was returned to him by the court because, according to the Small Claims Court's procedure, a motion date is booked and then motion materials are served.

144. On December 28, 1988, the Solicitor re-served his motion for a scheduled return date of January 24, 1989 at 9:30 a.m..

145. On January 24, 1989, the Solicitor attended at the courthouse at 9:55 a.m. The motion was returnable at 9:30 a.m. Because the Solicitor was not present at the appointed time, the motion was dismissed.

146. The Committee concludes that the Solicitor failed to serve his client George conscientiously, diligently and efficiently by failing to appear at all at the trial and by failing to appear on time at the hearing of the motion on January 24, 1989. The Committee also concludes that by failing to attend at the trial and on time at the motion, the Solicitor breached his duty to the court. Thus, Particulars 2 L (1) (v) (a) and (b) have been made out.

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:

- (vi) Alex and Maria Kokolakis, by reason of his undue delay (11 ½ months) in the delivery of his report regarding the close of real estate transactions.

147. On October 7, 1987, Alex Kokolakis agreed to purchase a cottage lot. His spouse Maria agreed to purchase an adjoining lot. These lots are described as Part 14 and Part 16, respectively, on reference Plan RD-56, Township of Seymour, County of Northumberland.

148. On December 1, 1987, the Solicitor closed the transaction. Both properties were registered in the name of George Kokolakis, trustee.

149. On December 7, 1987, the Solicitor delivered his statement of account and paid his fees from trust.

150. On November 25, 1988, almost one year after the completion of the transaction, the Solicitor delivered his reporting letter to Mr. and Mrs. Kokolakis. The Solicitor could give no explanation for this delay.

151. The Committee concludes that Particular 2 L (1) (vi) has been made out.

Particular 2 E

Re-billing

- (4) January of 1990, he misapplied the sum of \$1,161 held in trust for George Kokolakis to pay legal fees and disbursements in respect of accounts owing from George's parents, Alex and Maria, without George's direction authorizing him to do so.
- (5) In or about April to July, 1990, he misapplied the sum of \$1,595.25 from George Kokolakis to pay legal fees and disbursements in respect of accounts owing from George's parents, Alex and Maria, without George's direction authorizing him to do so;
- (6) Between January, 1990 and August, 1991, he breached s. 14(8c) of Regulation 708 by transferring funds from trust to general to pay purported legal fees and disbursements prior to the delivery of a billing or other written notification.

152. Between 1987 and 1991, the Solicitor acted for Alex, Maria and George in about fourteen different matters. While some of the matters were significant, many of them were "minor" in that the sums at issue were small and the amounts which could have been billed by the Solicitor were minimal. In some instances, the Solicitor did not deliver fee billings to the client upon the completion of the matters.

153. During this period, George sold computers, printers and wiring to the Solicitor for his law office. The Solicitor eventually concluded that George was over-charging him for these items. As their relationship deteriorated, the Solicitor decided to issue fee bills which, as he put it, "more accurately reflected the costs attributable to these files."

154. On January 22, 1990, the Solicitor wrote to George delivering eight accounts totalling \$3,652.50 for services rendered to Maria, Alex and George. Four accounts totalling \$1,141 related to Alex or Maria or their companies.

155. On January 22, 1990, the only funds held in trust by the Solicitor in respect of any Kokolakis matter was the sum of \$4,866 received on behalf of George on November 30, 1989. The Solicitor told George in his January 22, 1990 letter that he wished to pay the accounts from the \$4,866 in trust. George did not respond.

156. On April 30, 1990, without George's authorization, the Solicitor transferred the full amount of \$3,866 from monies held in trust for George to his general account. This included the \$1,161 billed to Alex and Maria.

157. On May 9, 1990, the Solicitor received a further \$1,150 in trust on behalf of George. On July 7, 1990, he transferred this to his general account.

158. On June 14, 1990, the Solicitor received a further \$591 in trust on behalf of George and immediately transferred it to his general account.

159. Thus, by July 7, 1990, the Solicitor:

- (f) had transferred to his general account the sum of \$5,607 (\$3,866 + \$1,150 + \$591);
- (g) had issued fee bills totalling only \$3,652.50; and
- (h) had appropriated \$1,161 of George's trust money to pay accounts rendered to Maria and Alex.

26th September, 1996

160. When George experienced difficulty in securing information about the amounts held for him by the Solicitor, he retained Mr. Burns, who wrote to the Solicitor. The Solicitor replied by letter dated August 30, 1991 and accurately advised that he had received \$6,607 as the proceeds of settlement of George's two motor vehicle accidents and that all of his accounts to the Kokolakis family had been retired or paid out from these monies. With this letter, the Solicitor provided a second reconciliation statement and eleven statements of account. The total amount of the accounts was \$6,682.75. Previously, by his letter of January 22, 1990, the Solicitor had delivered eight accounts totalling \$3,652.50. Thus, there was an increase of \$3,030.25 in accounts.

161. The Solicitor increased his account in the following three matters that had previously been billed:

- (i) Alex at Fallis Trading--account increased \$400 from \$50 to \$450;
- (j) Alex at Consumers Gas--account increased \$150 from \$50 to \$200; and
- (k) George's MVA of March 26, 1987--account increased \$450 from \$811.50 to \$1,261.50, although the total recovery had only been \$1,450.

162. The Solicitor also billed \$1,030.25 for three matters related to Alex and Maria. He also paid himself \$1,595.25 (\$400 + \$150 + \$1,030.25) in fees he knew related to Alex and Maria from monies belonging to George, without George's authorization.

163. The Committee concludes that Particulars 2 E (4) (5) and (6) have been made out. When the Solicitor paid Alex and Maria's accounts from George's money without express authorization, the Solicitor misapplied George's trust funds.

Particular 2 F

ZORA MITREVSKI PERSONAL INJURY MATTER

- (1) The Solicitor improperly appropriated the sum of \$400 received from the insurer for medical reports, \$200 of which properly belonged to the client Mitrevski (for which he eventually accounted to Mitrevski) and \$200 of which was owed to Dr. Soklaridis, which the Solicitor has not paid;
- (2) He misappropriated trust funds in the sum of \$697.51 owing to OHIP, which he did not pay to OHIP for some 27 months (between June 28, 1991 and August 23, 1993) after the misappropriation;
- (3) He rendered a misleading account to his client, Mitrevski, by advising that trust funds had been paid to OHIP when such was not the case;
- (4) In July, 1991, he rendered increased accounts in relation to three files for which he had already billed and been paid;
- (5) Breached s. 14(9) of Regulation 708 by transferring money owing to the Solicitor on account of fees and disbursements from trust to Battenleigh Management (on two occasions).

164. On October 7, 1989, Ms. Mitrevski was struck and injured by a shopping cart operated by an employee of a Highland Farms store in Scarborough.

165. On October 19, 1989, the Solicitor was retained. He gave notice to Highland Farms and to the Ontario Health Insurance Plan (OHIP). On November 29, 1989, OHIP retained the Solicitor to protect its subrogated interest that was first identified as \$587.11 and then as \$697.51.

26th September, 1996

166. On June 28, 1991, Ms. Mitrevski signed the necessary release and the Solicitor received \$25,310.51 which he properly deposited into his trust account.

167. On June 29, 1991, the Solicitor issued a statement of account to the client on a file identified as "Highland Farms." The Solicitor had rendered two previous accounts to the client on this and an unrelated matter. The total of these accounts was \$6,973 and the Solicitor transferred \$7,000 from trust to Battenleigh Management, his management company.

168. On July 19, 1991, the Solicitor sent Ms. Mitrevski a further disbursement account in the sum of \$283.85 and also sent her his trust cheque in the sum of \$17,576.15.

169. For the claim against Highland Farms, the Solicitor billed Ms. Mitrevski \$7,256.85 (\$6,973 + \$283.85). But the Solicitor transferred \$7,734.36 to Battenleigh Management (\$7,000 on June 29, 1991 and \$734.36 on or about July 19, 1991).

170. The "Client Trust Ledger Statement" which accompanied the Solicitor's July 19, 1991 account to Ms. Mitrevski also disclosed, as a disbursement, the payment of OHIP's claim in the amount of \$697.51.

171. But the Solicitor did not pay OHIP until after OHIP had sought status reports on November 20, 1992 and February 18, 1993 and had written the Society on March 5, 1993.

172. In response to inquiries from the Society, the Solicitor conceded that the July 19, 1991 disbursement account was essentially a duplication of disbursements billed on previous accounts.

173. On August 23, 1993, the Solicitor wrote to OHIP enclosing a cheque in the amount of \$697.51. He apologized "for the error and oversight on our part together with the delay in reporting back to you." The Solicitor told the Society the he "forgot" to pay OHIP.

174. The Committee concludes that the Solicitor misappropriated the \$697.51. He knew he had an obligation to pay OHIP this amount. Had the matter been a simple oversight, the Solicitor would have corrected the problem after the November 20, 1992 letter from OHIP. He only paid OHIP on August 23, 1993 because of the Society's involvement.

175. The Committee also concludes that the July 19, 1991 account and the Client Trust Ledger Statement were misleading because they showed OHIP having already been paid. The Committee concludes that Particulars 2 F (2) and (3) have been proved.

176. On March 12, 1990, Mr. Mitrevski's physician Dr. McGrath wrote to the Solicitor advising that his medical report could be picked up upon payment of \$200. On the Solicitor's instructions, Ms. Mitrevski paid the \$200 fee. The Solicitor received a copy of Dr. McGrath's \$200 account, thus confirming the \$200 payment by Ms. Mitrevski.

177. On July 6, 1990, Dr. Soklaridis delivered his medical report to the Solicitor together with his account in the amount of \$200. This account was never paid.

178. On July 13, 1990, the Solicitor wrote to the insurer for Highland Farms enclosing the medical reports of Dr. McGrath and Dr. Soklaridis and their accounts totalling \$400. At the Solicitor's request, the insurer paid him the \$400 by cheque dated September 21, 1990.

26th September, 1996

179. On October 1, 1990, the Solicitor deposited the \$400 into his general account although he had not issued any billing statement to Ms. Mitrevski. The Committee concludes that the Solicitor "improperly appropriated" the \$400 even though he eventually accounted for the \$400. The Committee concludes that Particular 2 F (1) has been proven.

180. Because the evidence was insufficient to establish that the Solicitor had improperly rendered increased accounts as alleged in Particular 2 F (4), the Committee finds that this portion of the complaint has not been proved.

Particular 2 G

MR. AND MRS. TONY KWOK - PURCHASE OF 38 TIMBERS CIRCLE, MARKHAM,
ONTARIO

- (1) Breached s. 14(8)(c) of Regulation 708 by transferring funds from trust to general to pay legal fees and disbursements prior to the delivery of a billing or other written notification.

181. The Solicitor was retained by Mr. and Mrs. Kwok to act on the purchase of their first home at 38 Timbers Circle, Markham. He closed the purchase on October 26, 1990.

182. On November 1, 1990, the Solicitor transferred \$1,000 from his trust to his general account for his fees. No account was issued at the time of this transfer.

183. On February 22, 1991, after Mr. and Mrs. Kwok complained to the Society, they received the Solicitor's report and his account which were both dated October 26, 1990.

184. The Solicitor transferred \$1,000 from his trust account before delivering a billing or any other written notification. The Committee concludes that Particular 2 G has been established.

Particular 2 H HOMESTEAD FINANCIAL LTD. (GERRY MULHOLLAND)

The Lien Agreements

- (1) Routinely improperly signed the name of his client, Gerry Mulholland, to Documents General and the supporting affidavits, and subsequently commissioned those affidavits as if properly sworn.

185. Gerry Mulholland was the principal of Homestead Financial Ltd. ("Homestead"), a mortgage broker. The Solicitor acted for Homestead from sometime in 1991 until early 1993 when there was an acrimonious termination of the relationship.

186. Homestead arranged mortgages. On those occasions when the borrower would not complete the transaction, Homestead solved the problem by providing in its agreement with the borrower that, if Homestead obtained a commitment for the borrower, its fee was earned even if the borrower did not borrow the money and its fee was to be secured against the borrower's property.

187. The borrower usually did not complete with Homestead because the borrower was able to arrange for a loan at a cheaper interest rate elsewhere.

188. The key for Homestead in collecting its fee was to register on the title to the property the agreement between Homestead and the borrower before the borrower completed his or her loan elsewhere, thereby requiring the borrower to pay out Homestead from his or her fresh loan.

26th September, 1996

189. Between December, 1991 and July, 1992, the Solicitor registered six Documents General on title to six properties.

190. On the first couple of occasions, Mulholland signed the Document General and swore the affidavit. The instruments were then registered. Quick registration resulted in Homestead's fee being paid.

191. Homestead's office was located in Etobicoke. The Solicitor's office was located in Scarborough. Therefore, Mulholland would courier the Listing Agreements to the Solicitor. The Solicitor prepared the Document General and affidavit and sent them to Mulholland by fax. Mulholland would sign the documents and fax them to the Solicitor for registration. This was done at Mr. Mulholland's insistence.

192. But the Registry Office would not accept documents containing "faxed" signatures. Thus, on approximately thirty (30) occasions the Solicitor signed Mulholland's name on the Document General and then purported to commission Mulholland's signature.

193. The Solicitor could have signed all Documents General as solicitor for Homestead and could have sworn the necessary affidavits in his capacity as solicitor for Homestead. However, he did not do so. When asked why, he could not offer any explanation.

194. The Committee concludes that Particular 2 H (1) has been proven.

Particular 2 H

HOMESTEAD FINANCIAL LTD. ATS VICTOR PAUL

- (2) Improperly commissioned affidavits executed by Mr. Mulholland dated August 10 and 11, 1992, contrary to the Commissioners for Taking Affidavits Act; and
- (3) Breached the following provisions of Regulation 708:
 - (i) s. 14(8)(c) by transferring money from trust to pay legal fees prior to delivery of a bill or other written notification; and,
 - (ii) s. 14(9) by directing payment of these monies to Battenleigh.

195. Homestead arranged financing for Victor Paul. Mr. Paul did not draw the funds. Homestead asserted it earned its fee and registered a Document General against Mr. Paul's property.

196. On August 10, 1992, Mr. Paul issued a Notice of Application seeking an order, among other things, deleting the lien agreement registered against its property. The application was returnable in court on August 11, 1992.

197. On August 10, 1992, the Solicitor faxed a draft affidavit to Mr. Mulholland and asked him to review the affidavit and sign the last page. Mulholland signed the last page and the Solicitor purported to commission Mulholland's signature when the last page of the affidavit was returned to him.

198. The Solicitor explained that this was his typical practice with Mr. Mulholland.

199. On August 11, 1992, a second Mulholland affidavit was prepared in the same manner.

200. Homestead and Mr. Paul settled this dispute and Mr. Ducas' firm received the sum of \$5,094.15.

26th September, 1996

201. On December 18, 1992, according to his client ledger, the Solicitor deposited \$5,094.15 in trust and paid it out to Battenleigh Management before delivering a bill or other written notification to Homestead. The statement of account and reporting were delivered by the Solicitor to Homestead on or about January 27, 1993.

202. The Committee concludes that Particulars 2 H (2) and (3) have been established.

Particular 2 C HOMESTEAD FINANCIAL V. EDMONDS AND PAYNE
 HOMESTEAD FINANCIAL V. PAYNE METAL ENTERPRISES LTD.
 HOMESTEAD FINANCIAL ATS DEBARTOLO

- (4) Breached Rule 8, Commentary 7 by terminating the client retainer after a dispute about fees by preparing and serving on himself, opposing counsel and the court of a Notice of Intention to Act in Person purportedly prepared by the client, which the client had not instructed the Solicitor to prepare.

203. The Solicitor acted for Homestead in the three litigation matters listed above.

204. However, by March of 1993, the relationship between the Solicitor and Homestead had broken down over whether Homestead was to pay fees in addition to disbursements. The Solicitor decided he no longer wished to act for Homestead.

205. The Solicitor spoke to Mr. Mulholland and told him that there were two ways in which he could be removed from the court record: he could bring a motion to be removed as solicitor of record; or, with Mr. Mulholland's consent, he could prepare a Notice of Intention to Act in Person, following which Homestead would represent itself.

206. In March of 1993, the Solicitor prepared a Notice of Intention to Act in Person on each of these matters. He delivered the notices to the court, opposing counsel, and Homestead with a letter explaining that these had been served upon him by Homestead. Clearly, the documents had not been served upon him by Homestead.

207. After receiving the documents, Mr. Mulholland wrote to the Solicitor expressly denying that he had instructed the Solicitor to prepare and file the notices.

208. Having heard from Mr. Mulholland that Mr. Mulholland had not in fact provided his consent to the Solicitor filing Notices of Intent, the Solicitor served motions to be removed as solicitor of record. In due course, by court order he was removed as solicitor of record in the three actions.

209. Mr. Mulholland did not testify before the Committee and the Solicitor did not testify as to whether or not Mr. Mulholland authorized him to prepare the Notices to Act in Person. Given these gaps in the evidence, the Committee concludes that Particular 2 C (1) has not been established.

Particular 2 H HOMESTEAD FINANCIAL LTD. V. NEWELL

- (5) Breached the Commissioners for Taking Affidavits Act by causing Gerry Mulholland to sign an affidavit of documents which was blank as to substantive content.

26th September, 1996

210. In the action *Homestead v. Newell*, Mr. Mulholland was obliged to swear an affidavit of documents on behalf of Homestead. The Solicitor prepared an affidavit of documents without the necessary schedules and Mr. Mulholland signed it. Yet, the signature was not commissioned and it was never used.

211. Because the Solicitor at no time commissioned the affidavit, there can be no merit in this portion of the complaint.

Particular 2 I

CATHY MOLL

- (1) Signed his client's name to affidavits filed with the Ontario Court (General Division), to a Land Transfer Deed, and to a Land Transfer Tax Act affidavit, and then commissioned the affidavits as if properly sworn;
- (2) Improperly prepared and served a Notice of Intention to Act in Person on his client's behalf without her consent.

212. On May 1988, Ms. Cathy Moll and Ms. Irene Grim purchased 671 Scarlett Road, Etobicoke (the "property"), as tenants in common. Ms. Grim also executed a declaration of trust declaring that she held her share of the property in trust for Ms. Moll. From 1987 to 1994, Ms. Moll's office was located at 69 Yonge Street, Toronto.

213. Ms. Grim commenced an application seeking, among other things, a declaration that the declaration of trust was void and an order for sale of the property.

214. By December 20, 1991, Ms. Moll retained the Solicitor to defend Ms. Grim's application, to commence a separate action against Ms. Grim, to give advice on her default on the Harper mortgage (the "Harper Mortgage") and to defend a mortgage action against her by the Toronto Dominion Bank.

215. The Solicitor prepared two affidavits for use in the Ms. Grim application, signed Ms. Moll's name to both affidavits, and subsequently commissioned them himself. The Solicitor's action is inexplicable given that he attended at Ms. Moll's office on the very date he signed Ms. Moll's affidavits.

216. On January 17, 1992, the Solicitor prepared a draft affidavit for Ms. Moll to swear in the Harper Mortgage action. The Solicitor admits that he signed Ms. Moll's name to the affidavit and then purported to commission the signature.

217. On or about January 22, 1992, the Solicitor filed a further affidavit in the Harper Mortgage action and again signed Ms. Moll's name and purported to commission the signature.

218. The Society asked the Solicitor about his pattern of signing the client's name to affidavits. The Solicitor and Ms. Moll both confirm that the Solicitor typically would fax a draft affidavit to Ms. Moll with a request that she review it. She would then fax back to him any changes required. The changes, if any, would be made and the affidavit would be faxed to the client with a request that she sign and return it. Ms. Moll would sign the affidavit and fax it (or sometimes just the signing page) back to the Solicitor.

219. The Solicitor's best recollection is that he received these signed affidavits on thermal fax paper, which the court originally would accept for filing but which the court stopped accepting when it learned that this paper would fade over time. In order to file the documents the Solicitor signed her name to unsigned copies.

26th September, 1996

220. The Solicitor said that he always took Ms. Moll's oath on the affidavits over the telephone. Ms. Moll stated that he did not ask her to swear to the truth of any of them. Ms. Moll had informed the Solicitor that she had been a legal secretary for several years and was familiar with affidavits and declarations. The Solicitor advised the Society that to contest the application launched by Ms. Grim he would require a detailed history of their relationship with all relevant documents and accounting records. The Solicitor then prepared a number of draft affidavits and reviewed and discussed them with Ms. Moll.

221. By February 21, 1992, Ms. Moll and Ms. Grim had agreed that Ms. Grim would transfer her interest in 671 Scarlett Road to Moll. The Solicitor had a Transfer executed by Ms. Grim.

222. The Solicitor admitted that he signed Ms. Moll's name to the Land Transfer Tax Act affidavit, which he subsequently swore, and to the Statutory Declaration (sworn to obtain a land transfer tax exemption).

223. On July 10, 1992, the Toronto Dominion Bank issued a Statement of Claim against Ms. Moll and Ms. Grim seeking possession of the Scarlett Road property and payment of the amount owing under the bank's first mortgage.

224. On August 7, 1992, although the Solicitor had still not received a retainer from Ms. Moll, he filed a Statement of Defence, Counterclaim and Cross-Claim against Ms. Grim.

225. On August 10, 1992, the Solicitor wrote to Ms. Moll enclosing a copy of that pleading. He asked for a retainer of \$1,000 and stated that, unless he received it, he could not continue to act on her behalf.

226. On January 26, 1993, the Solicitor sent Ms. Moll a copy of a motion record which he had received from the solicitors for the Toronto Dominion Bank. The bank was moving for summary judgment against Ms. Moll. The motion was returnable on February 16, 1993. The Solicitor asked for a retainer of \$750, "failing which I will prepare and file on your behalf a Notice of Intent to Act in Person."

227. On January 28, 1993, Ms. Moll responded to the Solicitor. She said that she would deliver the requested retainer when she met with the Solicitor. She asked him to set up a meeting. No such meeting took place.

228. On Thursday, February 11, 1993, the Solicitor again wrote to Ms. Moll enclosing the plaintiff's factum. He told her "I wish you luck when you attend on the motion. I will be preparing and filing a Notice of Intention to Act in Person and this will be served upon the other solicitor immediately." Ms. Moll did not respond to the Solicitor's letter. The Solicitor stated that Ms. Moll had already moved out of the home months earlier and that eviction was therefore not a concern.

229. On February 16, 1993, Ms. Moll attended on the motion on her own behalf to request an adjournment. The request was denied, the motion proceeded, and the Bank obtained summary judgment with costs fixed in the sum of \$500.

230. The Solicitor prepared a Notice of Intention to Act in Person on behalf of Ms. Moll and served it on himself. The Solicitor asserts that Ms. Moll gave her consent. Ms. Moll did not testify.

231. The Committee concludes that the Solicitor signed Ms. Moll's name to the affidavits, to a deed and to a land transfer tax affidavit and then purported to commission the signatures as if properly sworn. The Committee concludes that Particular 2 I (1) has been established.

26th September, 1996

232. However, given that there is a dispute as to whether Ms. Moll gave her authority to the Solicitor to deliver the Notice of Intent to Defend in Person, given that Ms. Moll did in fact attend in person to defend the action, and given that Ms. Moll first denied then only after this hearing began admitted having reviewed the Notice, the Committee concludes that Particular 2 I (2) has not been established.

Particular 2 J

GEORGE GIANTSOPOULOS MOTOR VEHICLE ACCIDENT

- (1) Failed to account to the client fully for funds received and disbursed on behalf of the client;
- (2) Misled a judge of the Ontario Court (General Division) on a motion to set aside the dismissal of an action at a Status Hearing by falsely deposing on April 21, 1989 that he had not received the Notice of Status Hearing, when in fact he had received it;
- (3) On a cross-examination on his Affidavit on May 15, 1989, he falsely swore that he did not receive a Notice of Status Hearing when in fact he had received it;
- (4) Caused his client to execute a release which was blank in various material respects, in respect of the settlement with Wausau;
- (5) He breached Rule 3, Commentary 10 and Rule 5, Commentary 15 by failing to promptly report the dismissal of the action at the Status Hearing and subsequent dismissal of the appeal for delay;
- (6) Breached Regulation 708 s. 15 by failing to have books and records which fully and accurately reflect all monies received and disbursed on behalf of the client.

Particular 2 L

FAIL TO SERVE CLIENTS

- (1) He has failed to serve the following clients in a conscientious, diligent and efficient manner:
 - (vii) George Giantsopoulos, by failing to diligently pursue the appeal of a Judgment in a motor vehicle action.

233. On May 10, 1986, George Giantsopoulos took out a motor vehicle insurance policy with Employers' Insurance of Wausau ("Wausau") insuring the Corvette he owned.

234. On May 13, 1986, Peter Giantsopoulos was involved in a single-car motor vehicle accident while driving the Corvette. There was damage to two properties. Shortly thereafter he made a claim to Wausau.

235. On June 26, 1986, Wausau advised that it was rescinding the policy due to alleged misrepresentations made in the application.

236. In June or July, 1986, the Solicitor was retained. At the time the Solicitor was retained, he was employed by the firm of Basman & Dougherty. He was not doing litigation work, so he passed this file on to his associate Steven Goldman.

26th September, 1996

237. On October 30, 1986, Goldman issued two Statements of Claim. The first one (District Court action 278498/86) named Wausau, Matthews and Associates Insurance Brokers and Tom Phillips (an employee of the insurance broker) as defendants (the "Wausau Action"). The claim alleged that an application for insurance was made through the broker and its agent Phillips who advised that Wausau had agreed to issue coverage. The plaintiff claimed that the Wausau policy was in full force and effect and alternatively claimed that the broker was negligent in not ensuring that coverage was in place.

238. The second action (District Court action 278499/86) named Frank Soul as defendant (the "Soul Action"). That claim alleged that Soul, a mechanic, had negligently repaired the Corvette which was the cause of the accident.

239. On November 24, 1986, Wausau delivered its Statement of Defence.

240. On or about May 19, 1987, the Solicitor left the firm of Basman & Dougherty to practise on his own and took responsibility for the two files. Mr. Goldman asked him to deliver a notice of change of solicitors. On May 15, 1988, the Solicitor finally delivered the notice of change of solicitors.

241. In July, 1987, the Solicitor estimated that his client's loss totalled approximately \$16,000. He proposed that each of the three defendants contribute \$4,000 to a settlement, thus each party (including the client) would be responsible for 25% of the loss. Only Wausau and Soul eventually agreed to contribute \$4,000.

242. On December 30, 1987, the Solicitor wrote to the client to give him a status report. He explained that Wausau had agreed to contribute \$4,000 provided that the client obtained releases from the owners of two properties which were damaged in the accident. Their claims totalled approximately \$2,100. The other defendants had yet to agree to contribute. The Solicitor recommended that the client settle with Wausau alone at this time.

243. On February 18, 1988, Wausau's solicitor John McNeil sent a cheque for \$4,000 to the Solicitor, and asked that he hold the funds in escrow pending receipt of the releases.

244. On March 8, 1988, the Solicitor received a release from one of the property owners for a payment of \$539.07.

245. On May 10, 1988, the Solicitor obtained a release from his clients in favour of Wausau. The Solicitor had the clients sign the draft release omitting the amount of the payment and the direction on payment, the date and the witness to the signature. The Solicitor subsequently filled in this information. Thus, the Committee concludes that Particular 2 J (4) has been proven.

246. On May 19, 1988, the Solicitor paid \$1,182.73 to obtain a release from the second property owner. He then wrote to Mr. McNeil to enclose the releases and finalize the settlement with Wausau.

247. The Solicitor's file contained no written report to the client regarding the settlement and no record of the receipt and disbursement of the \$4,000.

248. On June 23, 1988, the Solicitor received a letter from Mr. McNeil. The Solicitor had settled against Wausau but was attempting to pursue the action against the insurance broker and agent. Mr. McNeil objected, taking the position that the settlement included all possible claims against Wausau. The other defendants had a cross-claim against Wausau and Mr. McNeil's position was that it is not open to the plaintiffs to pursue those defendants given the terms of the release.

26th September, 1996

249. On October 31, 1988, because the Solicitor and Mr. McNeil had been unable to resolve their dispute, Mr. McNeil brought a motion asking for summary judgment to dismiss the action in its entirety. Conant J. dismissed Wausau's motion. Wausau appealed.

250. There was no written report in the Solicitor's file to the client regarding the settlement dispute, the motion, its disposition or Wausau's appeal.

251. On December 23, 1988, the court issued a Notice of Status Hearing in the Wausau Action to be held Monday, April 10, 1989. This notice was directed to the firm of Basman & Dougherty on behalf of the plaintiff because the Solicitor had not yet delivered a notice of change of solicitors.

252. On January 5, 1989, Marilyn Poulin, a secretary and clerk at Basman & Dougherty, wrote a handwritten note to the Solicitor advising him of the April 10, 1989 status hearing and attaching the Notice of Status Hearing. The memo bears the Solicitor's "received" date stamp of January 9, 1989.

253. On January 25, 1989, Wausau's appeal of Conant J.'s Order was heard by Mr. Justice Fitzpatrick. The appeal was dismissed with costs payable to the plaintiff in any event of the cause forthwith after taxation.

254. The Solicitor's file contains no written report to the client regarding the disposition of the appeal in the Wausau Action. The Solicitor stated that he advised the client orally that Wausau's motion was dismissed with costs, such costs to be assessed at a separate assessment hearing.

255. On April 10, 1989, the Solicitor did not attend at the status hearing. Mr. Justice Coe dismissed the Wausau Action with costs.

256. On April 21, 1989, the Solicitor brought a motion for an order setting aside the Order dismissing the Wausau Action. It was accompanied by the Solicitor's affidavit sworn April 21, 1989. The Solicitor swore in his affidavit that he did not attend the status hearing because "I did not receive the Notice of Status Hearing." He also swore "When this action was commenced the plaintiff had been represented by Basman & Dougherty. A Notice of Change of Solicitors had been filed with the court changing solicitors to Rendeiro, Ducas, Associates." These statements were false.

257. On May 5, 1989, Mr. McNeil cross-examined the Solicitor on his affidavit. When cross-examined, the Solicitor said that he had not received the Notice of Status Hearing and that he assumed that he had not received the notice because it might have been sent to Basman & Dougherty in error. These statements were also false.

258. On May 17, 1989, the motion to set aside the dismissal of the Wausau Action proceeded. Madam Justice Haley set aside the dismissal of the action and ordered the plaintiffs to pay Wausau \$150 in costs.

259. The Solicitor misled the court, falsely swearing that he had no notice of the status hearing and that he had not received the Notice of Status Hearing. The Committee concludes that Particulars 2 J (2) and (3) have been proven.

260. The Solicitor's file did not contain any written report to the client or to Errors and Omissions regarding the missed status hearing, the dismissal of the action, the motion to restore the action, the cross-examination or the disposition of the motion. The Committee concludes that the Solicitor failed to keep the clients informed of the status of this litigation and that Particular 2 J (5) has been proven.

26th September, 1996

261. On April 16, 1990, the Solicitor's secretary, Tracey Mason swore an affidavit, drafted and commissioned by the Solicitor, in respect of another motion. At paragraph 9 she deposed that "[a] status hearing took place on this action on April 10, 1989. Mr. Ducas did not appear on the status hearing and the Notice of Status Hearing had been mailed out to Basman & Dougherty, the previous solicitors of record for the plaintiff in this action." This statement was false.

262. On May 1, 1990, the Solicitor wrote to the client to explain that Mr. Soul had agreed to contribute \$4,000 towards the settlement. The Solicitor obtained the client's release.

263. On May 9, 1990, the Solicitor paid \$150 from his general account to satisfy Madam Justice Haley's cost order.

264. On May 11, 1990, the Solicitor received \$4,000 from the solicitors for Mr. Soul and deposited those funds into trust.

265. On May 15, 1990, the Solicitor wrote to the client enclosing his statement of account regarding the Soul matter. He advised that he would retain the settlement funds towards fees and disbursements on the Wausau Action.

266. The Solicitor also issued an account in the Wausau Action. It does not contain a trust statement or any other explanation of handling of funds received on behalf of the client.

267. According to the client, he did not receive the above correspondence from the Solicitor or either of the statements of account. In fact, he said that he never received a statement of account, or an accounting of the funds received and disbursed on his behalf, from the Solicitor. He said that he knew of the receipt of \$4,000 from each of the two defendants, but was not given further details by the Solicitor.

268. On May 31, 1990 and June 14, 1990, the Solicitor made two separate transfers in the amount of \$2,000 from his trust account to his general account on the Soul matter.

269. On September 18, 1990, the solicitor for the broker in the Wausau Action offered to settle the action by a dismissal of the action without costs. There was no evidence in the Solicitor's file to disclose that he put this offer to the client.

270. On or about November 14 or 15, 1990, the Solicitor received \$1,105 from Mr. McNeil respecting the costs of Wausau's unsuccessful motion and appeal. The Solicitor deposited those funds into trust.

271. On November 21, 1990, the Solicitor transferred \$1,105 from his trust account to his general account.

272. The Solicitor did not advise the client of the receipt of the \$1,105.

273. On June 26 and 28, 1991, the trial was held before Mr. Justice Cavarzan. At the trial, the Solicitor was in the unusual position of having to prove that the insurance policy was void ab initio, and that there was no coverage in place, in order to succeed against the broker. The Court found that there was a policy of insurance in place at the time of the loss and that, therefore, the plaintiff's claim against the broker and agent failed. In assessing what damages, if any, may have been suffered, the trial judge found that the vehicle was worth \$8,500 at the date of the accident, from which was to be deducted the \$2,600 received for its scrap value, the \$4,000 received from Wausau and the recovery from Mr. Soul (the amount of which was not disclosed to the Court). The action was dismissed with costs.

26th September, 1996

274. On July 31, 1991, the Solicitor delivered a Notice of Appeal to the Divisional Court.

275. On August 30, 1991, the Solicitor wrote to the client to confirm that he had filed a Notice of Appeal and that he would advise of the hearing date. The Solicitor said that he also sent a Statement of Account totalling \$5,016.08. The client did not receive the account.

276. The Society found no written report to the client regarding the trial beyond a brief letter dated August 30, 1991 to the effect that the appeal had been commenced. The Solicitor conceded that he may not have done a written report. He explained that with "ethnic" clients, "the worst thing you can do" is to write them a letter because they then wish to come in and discuss it with you in minute detail. He explained that he would discuss things directly with the client in lieu of writing to him, and admitted that he probably did not write to the client as often as he should have.

277. On May 13, 1993, the Registrar of the Divisional Court delivered to the Solicitor a Notice of Intention to Dismiss Appeal for Delay, unless the appeal was perfected on or before May 28, 1993.

278. On May 28, 1993, the Registrar dismissed the appeal for delay.

279. On June 4, 1993, the Solicitor brought a motion for an order setting aside the dismissal of the appeal and extending the time within which to perfect the appeal.

280. On June 9, 1993, Lane J. made an order setting aside the dismissal of the appeal and extending the time to perfect it.

281. On July 18, 1994, the solicitor wrote to the client to ask that he provide a \$500 deposit for trial transcripts that had been requested by the Court Reporter. The transcripts were required for the appeal.

282. On August 9, 1994, the Solicitor received a letter dated August 5, 1994 from the Registrar of the Court of the Divisional Court giving notice that unless the appeal was perfected by August 22, 1994, it would be dismissed for delay once again.

283. On August 12, 1994, the Solicitor wrote to the client to advise him of this letter.

284. Because Mr. Giantsopoulos was concerned about the Solicitor's conduct and his own exposure to the defendant's costs and because the Solicitor's legal fees had not been adequately addressed by the Solicitor, the client refused to provide a further \$500 to the Solicitor. Accordingly, on August 22, 1994, the appeal was dismissed for delay.

285. Eventually, the Solicitor sent the client an account dated January 21, 1995 in connection with the appeal. The account recited a disbursement by the Solicitor of \$500 for trial transcripts.

286. Particular 2 L (1) asserts that the Solicitor failed to serve Mr. Giantsopoulos in a conscientious, diligent and efficient manner by failing to diligently pursue the appeal. But the client elected not to pay for the transcript, and the Committee concludes that this decision was an impediment to the prosecution of the appeal justifying the dismissal of complaint 2 L (1) (iv).

287. However, the Solicitor's books and records fail to accurately disclose all receipts and disbursements on behalf of Mr. Giantsopoulos. Examples are as follows:

26th September, 1996

- (l) The second client ledger closed with a balance held in trust of \$566.94. The third ledger, supposedly a continuation of the second, opens with no balance. This amount was never credited to the client's trust. The Solicitor could not explain this omission. It may be that as at June 30, 1988, \$566.94 was held in trust and that on January 26, 1989 the \$566.94 was transferred to the general account.
- (m) According to the Solicitor's records, as at May 30, 1988, the Solicitor had disbursed \$3,783.06 of \$4,350 received of the client trust funds; however, he had billed only \$2,074.31. This inconsistency is probably explained by the Solicitor having transferred money to his general account before rendering a billing.

288. The Committee concludes that, because the Solicitor failed to fully account to his client for all funds received and disbursed, Particular 2 J (i) has been proven.

Particular 2 K

TRACEY MASON - IMPROPER SIGNING BY SOLICITOR OF SECRETARY'S NAME

- (1) On a number of occasions he improperly signed the name of his secretary, Tracey Mason, to affidavits either as affiant or as commissioner.

289. From time to time, the Solicitor signed the names of other people as, for example, Mr. Mulholland and Ms. Moll on legal documents. A review of the Solicitor's files disclosed that many affidavits and other documents were purportedly signed by Tracey Mason. However, in fact the Solicitor regularly signed Ms. Mason's signature to documents and then purported to witness or swear the signature.

290. By way of example, Document Book - Tab 262 contains a variety of documents purporting to bear Ms. Mason's signature but are in fact documents signed by the Solicitor himself. These documents are dated between November 12, 1990 and June 17, 1993.

291. In December, 1992, the Solicitor began to work with Noik & Associates. He knew that the Law Society was investigating him. Still, even in June of 1993, he signed Ms. Mason's name to a document.

292. On approximately 30 occasions the Solicitor signed Mr. Mulholland's name; on numerous occasions the Solicitor signed Ms. Mason's name as a deponent or as a commissioner.

293. The Solicitor gave no meaningful explanation for this misconduct other than to say that he was a litigator who did his paper work in the evenings and that it was difficult to meet deadlines.

294. The Committee concludes that Particular 2 K (1) has been established.

RECOMMENDATION AS TO PENALTY

295. The Solicitor has a prior discipline history. On January 30, 1987, the Solicitor was reprimanded in Committee for failing to produce his books and records to the Society. He also gave an Undertaking at that time. On July 14, 1992, the Solicitor was reprimanded in Committee for failing to reply to the Law Society and for failing to honour an Undertaking given to the Society.

26th September, 1996

296. The Solicitor was married in 1980. His marriage is stable. He has two children, aged 10 and 11 years. His spouse has stood by him in this crisis.

297. The Society and the Solicitor's counsel jointly proposed a range of penalty of two years with conditions thereafter to disbarment.

298. The Solicitor's misconduct was wilful, serious, pervasive, and continuous over many years. It may be summarized, in part, as follows:

- (n) misappropriation of approximately \$1,000 (3 particulars);
- (o) misappropriation of about \$3,350 (2 particulars);
- (p) misleading of a court and swearing falsely on his cross-examination;
- (q) failing to cooperate with the Society's audit;
- (r) failing to file his forms 3/4 in a timely manner;
- (s) breaching on three occasions his undertaking to promptly respond to the Society;
- (t) backdating an affidavit;
- (u) swearing a false Land Transfer tax affidavit;
- (v) signing on approximately 30 occasions Mr. Mulholland's name to an affidavit and then purportedly commissioning Mr. Mulholland's signature;
- (w) signing on numerous occasions Ms. Mason's name as deponent or as commissioner; and
- (x) transferring on approximately 10 occasions money from his trust account without billings.

299. Such conduct demonstrates that the Solicitor is ungovernable and leads inexorably to the conclusion that he lacks integrity.

300. For the Committee, the choice was necessarily narrow and stark: disbarment or permission to resign.

301. The Solicitor was cooperative with the Society throughout the hearing process. He entered into lengthy agreed statements of fact, thereby shortening what might have been weeks of hearings to a few days. He was most responsible in this respect. He also undertook to have his practice supervised and has been true to these obligations.

302. The Solicitor testified in his own behalf. He has consulted a psychiatrist, although there was no medical report before the Committee. He has acknowledged being his own worst enemy. He simply could not draw a distinction between his own interests and the need to adhere to rules of professional conduct on the one hand and the interests of the client on the other.

303. The Solicitor also testified that he agreed with Dr. Barsky's opinion that he resents and has a problem with authority and that he will require lengthy counselling to overcome these problems.

26th September, 1996

304. The Committee is mindful that disbarment usually follows misappropriation, that central to the discipline function is general deterrence, that the need to maintain the integrity of the profession in the eyes of the public is a primary consideration and that the Solicitor's misconduct caused serious damage to the integrity of the profession.

305. The Committee concludes that these principles can be satisfied by an order that the Solicitor be allowed to resign. The Committee believes that the Solicitor is ungovernable and does not understand the need to follow basic rules. At the same time, the Solicitor does not seem to have been motivated by greed. In all the circumstances, including the joint submission as to the range of penalty, we consider his misconduct does not warrant disbarment. And we recommend to Convocation accordingly.

ALL OF WHICH is respectfully submitted

DATED this 25th day of June, 1996

Harvey T. Strosberg, Q.C.

Mr. Perrier asked that the following correction be made to the Report:

- page 67, paragraph 298., subparagraph (a) should read as follows:

"(a) misapplications of approximately \$1,000 (3 particulars)"

There were no submissions, the finding was confirmed and the Report adopted.

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

Both counsel made submissions in support of the recommended penalty.

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

It was moved by Mr. Cole, seconded by Ms. Curtis that the solicitor be disbarred.

Counsel, the solicitor, the reporter and the public were recalled and informed of the motion for an increased penalty. Counsel were asked if they wished to make further submissions.

The matter was stood down.

Re: Richard Michael Hugh POWER - Toronto

The Secretary placed the matter before Convocation.

Messrs. MacKenzie and Adams withdrew for this matter.

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

26th September, 1996

Convocation had before the Report of the Discipline Committee dated 5th July, 1996, together with the Affidavit of Service addressed to the solicitor at 678 Eglinton Avenue East, Toronto sworn 1st August, 1996 by Ron Hoppie that he had effected service on the solicitor by registered mail on 23rd July, 1996 (marked Exhibit 1) together with the Report and Affidavit of Service sworn 12th September, 1996 by David Munro, Process Server (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

Gavin MacKenzie, Chair
Michael Adams
Bradley Wright

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

Allan Maclure
for the Society

RICHARD MICHAEL HUGH POWER
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: June 18, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

Four complaints were before the Committee. Complaint D342/93 was sworn on November 18, 1993. Complaint D65/94 was sworn on April 8, 1994. Complaint D214/95 was sworn on July 26, 1994. Finally, Complaint D78/96 was sworn on March 5, 1996.

The matter was heard in public on June 18, 1996, before a Discipline Hearing Panel composed of Gavin MacKenzie (Chair), Michael Adams, and Bradley Wright. Neither the Solicitor nor counsel for the Solicitor was in attendance.

Allan Maclure appeared on behalf of the Law Society.

The Committee received as Exhibits 1 through 3, Affidavits of Service sworn May 3, 1994, June 5, 1996 and June 17, 1996. The Solicitor personally acknowledged receipt of a registered letter containing copies of all four of the complaints that were before the Discipline Hearing Panel today. The package containing the four complaints also contained a notice of the date scheduled for the hearing date to be set. The Solicitor did not attend before the Hearing Assignment Tribunal to set a date, and has not at any time communicated with the Law Society's counsel concerning the scheduling of the hearing.

26th September, 1996

When the matter first came before a Discipline Hearing Panel for hearing, the Solicitor did not attend. The Panel adjourned the matter and asked the Law Society's counsel to re-serve the complaints with a notice that the hearing would take place on June 18 and 19, 1996.

The complaints were re-served both by registered mail and by personal delivery to the Solicitor's residence. The Notice of Hearing that accompanied the complaints included the following statement:

"As indicated in the Notice of Time and Place of Hearing, should you not appear on June 17 and 18, 1996, commencing at 9:30 a.m. each day, the Society shall be asking the Discipline Committee to proceed in your absence. Please also be advised that in view of your continued failure to communicate with the Society and to address the matters which are subject of the Complaints, the Society will be asking the Discipline Committee to find that you are ungovernable and, accordingly, the penalty of disbarment is appropriate."

The process server who served the complaints and the Notice of Time and Place of Hearing has sworn an affidavit that he left the materials with one Christopher Laverton at the Solicitor's address, having received confirmation from a neighbour that the Solicitor in fact resides at that address. The process server has also sworn that Mr. Laverton confirmed that the address was the Solicitor's "address for service", but added that the Solicitor was in South America for another month or so. The package was delivered on June 6, 1996.

Initially the Panel was reluctant to proceed in the absence of the Solicitor in a case in which it has information that the Solicitor is out of the country, particularly in view of the fact that the Law Society is seeking a recommendation that the Solicitor be disbarred. However, having reviewed the history of the proceedings carefully, the Panel was satisfied that in all the circumstances, it was appropriate that the matter proceed. The Panel considered the following factors:

1. The Solicitor acknowledged receipt of copies of all four complaints, together with a notice specifying the date on which a hearing date would be set before the Hearing Assignment Tribunal;
2. The Solicitor neither attended before the Hearing Assignment Tribunal nor communicated with the Law Society's counsel concerning the scheduling of the hearing;
3. The Solicitor has at no time requested an adjournment; and
4. Two of the complaints have been outstanding for more than two years, and a third has been outstanding for almost two years.

DECISION

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

Complaint D342/93

- 2.a) He failed to file with the Society within six months of the termination of his fiscal year ending July 31, 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.

26th September, 1996

Complaint D65/94

- 2.a) He has failed to reply to the Society regarding inadequacies that remained outstanding from the original letter of inadequacies in his books and records dated October 24, 1991, despite letters dated November 2, 1992, May 10, 1993 and July 15, 1993.
- b) He has failed to produce books and records as required by Section 18 of Regulation 708 under the Law Society Act.

Complaint D214/94

- 2.a) He failed to provide a reply to the Law Society regarding a complaint by June Delorme, despite letters dated November 25, 1993, and January 19, 1994;
- b) He failed to provide a reply to the Law Society regarding a complaint by Anthony P. Yapp, despite letters dated March 17, 1993, May 26, 1993, June 21, 1993 and January 19, 1994 and telephone messages left on May 11, 1993 and May 14, 1993.

Complaint D78/96

- 2.a) He failed to answer with reasonable promptness letters to him dated June 22, 1993, September 12, 1993, November 8, 1993 and February 1, 1994 from his client, Harvey Cantor, that required a reply;
- b) He failed to account for monies entrusted to him by his client, Harvey Cantor;
- c) He failed to provide a reply to the Law Society regarding a complaint by his client, Harvey Cantor, despite letters dated February 25, 1994 and April 6, 1994 and a telephone conversation on March 23, 1994; and
- d) He failed to file with the Society within six months of the termination of his fiscal years ended July 31, 1993, July 31, 1994 and July 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Discipline Hearing Panel received seven affidavits in evidence, pursuant to section 33(9) of the Law Society Act R.S.O. 1990 c.L.8. The Panel was satisfied based on the affidavit evidence, and the exhibits appended to the affidavits, that each of the particulars in all four of the complaints were established.

The evidence accepted by the Committee is set forth below.

COMPLAINT D342/93

Irene Andrighetti, the Law Society's Supervisor of Annual Filings/Membership Records, in her affidavit sworn June 14, 1996, deposed as follows:

"On or about February 4, 1993, the Law Society forwarded to the Solicitor a Notice of Default in Annual Filings, a true copy of which is attached hereto and marked as Exhibit "A" to this my affidavit.

26th September, 1996

On or about March 6, 1993, the Law Society forwarded to the Solicitor by registered mail a Second Notice of Default in Annual Filing. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and in default in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to s.36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A true copy of this Second Notice is attached hereto and marked as Exhibit "B" to this my affidavit.

The Notice of March 6, 1993 was signed for and delivered on March 11, 1993. A true copy of the Acknowledgement of Receipt card is attached hereto and is marked as Exhibit "C" to this my affidavit.

The Solicitor did not respond to the Second Notice of Default in Annual Filing dated March 6, 1993.

The late filing fee began to accrue on March 22, 1993.

On or about August 6, 1993, the Law Society forwarded to the Solicitor by registered mail a Third Notice of Default in Annual Filing. The Solicitor was advised, *inter alia*, that his name would go before Convocation on September 24, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on September 23, 1993. A true copy of this Third Notice of Default in Annual Filing is attached hereto and is marked as Exhibit "D" to this my affidavit.

The Notice of August 6, 1993 was returned to the Law Society marked "unclaimed". A true copy of the returned envelope forms part of Exhibit "D" to this my affidavit.

On or about September 29, 1993, the Law Society forwarded to the Solicitor by registered mail a letter advising him that his rights and privileges as a member of the Law Society had been suspended by Convocation as of September 24, 1993. This letter was returned to the Law Society marked "unclaimed". A true copy of the letter dated September 29, 1993 and returned envelope are attached hereto and marked as Exhibit "E" to this my affidavit.

To date, the Solicitor has not provided his required annual filings for fiscal year ended July 31, 1992."

COMPLAINT D65/94

Particular 2(a)

Margot Devlin, the Manager of the Examiner Program of the Audit and Investigation Department of the Law Society, in her affidavit sworn June 7, 1996, deposed as follows:

"I have reviewed the Law Society's file pertaining to Richard Michael Hugh Power (the "Solicitor") and I have knowledge of the matters hereinafter deposed except where stated to be based upon information and belief.

An audit of the Solicitor's books and records was commenced on or about May 30, 1991. During this examination, the auditor discovered a number of inadequacies with respect to the Solicitor's books and records. On October 24, 1991, I wrote to the Solicitor and I advised him of the following inadequacies:

26th September, 1996

- a) his trust cash disbursement record did not always show the full particulars required by s.15(1)(b) of the Regulation;
- b) a transfer record was not maintained as required by s.15(1)(d) of the Regulation, showing all transfers between client's trust ledger accounts and explaining the reason for the transfer;
- c) his general cash disbursement record did not always show the full particulars required by s.15(1)(f) of the Regulation;
- d) his trust bank reconciliation had contained the same uncorrected reconciling items reappearing from month to month; and
- e) he had not been making proper monthly trust comparisons as required by s.15(1)(h) of the Regulation.

The Solicitor was asked to confirm that he had taken steps to correct the foregoing deficiencies. Attached hereto and marked as Exhibit "A" to this my affidavit is a true copy of my letter to the Solicitor dated October 24, 1991.

By letter dated September 18, 1992, the Solicitor advised the Law Society that:

- a) his trust cash disbursements record and general cash disbursement record never included cheque numbers;
- b) transfers between client trust ledger accounts were uncommon in his practice but he had established a separate transfer journal to include such transfers;
- c) he had corrected the items in his bank reconciliation; and
- d) his monthly comparisons did not take into account outstanding cheques. He enclosed copies of trust listings and reconciliations for June and July 1991.

A true copy of the Solicitor's letter dated September 18, 1992 is attached hereto and marked as Exhibit "B" to this my affidavit.

On November 2, 1992, I replied, in writing, to the Solicitor's letter dated September 18, 1992. I advised the Solicitor that his response did not fully meet the requirements as set out in the Law Society's letter dated October 24, 1991. (see Exhibit "A" to this my affidavit). The Solicitor was asked to provide the Society with copies of his bank statements as at June 30 and July 31, 1991 as well as his trust list and bank reconciliation for June 30, 1991. A true copy of my letter to the Solicitor dated November 2, 1992 is attached hereto and marked as Exhibit "C" to this my affidavit.

The Solicitor did not respond to my letter dated November 2, 1992.

On May 10, 1993, I again wrote to the Solicitor, enclosing a copy of my letter dated November 2, 1992 and requesting the Solicitor's response. A true copy of my letter of May 10, 1993 is attached hereto and marked as Exhibit "D" to this my affidavit.

The Solicitor did not respond to my letter of May 10, 1993.

26th September, 1996

On July 15, 1993, I again wrote to the Solicitor. This letter was sent to the Solicitor's office by way of registered mail, and enclosed copies of my letters dated November 2, 1992 and May 10, 1993. I reminded the Solicitor of his professional obligation to respond promptly to communications from the Law Society. The Solicitor was advised that if a response was not received within 15 days, the matter would be referred to the Chair and Vice-Chairs of the Discipline Committee. A true copy of my letter of July 15, 1993 is attached hereto and is marked as Exhibit "E" to this my affidavit.

My letter of July 15, 1993 was returned to the Law Society marked "moved".

On August 16, 1993, I again wrote to the Solicitor, enclosing copies of my letters dated November 2, 1992 and May 10, 1993. I reiterated the information contained in my letter of July 15, 1993. This letter was sent to the Solicitor by way of registered mail addressed to the Solicitor's home address. A true copy of my letter of August 16, 1993 is attached hereto and is marked as Exhibit "F" to this my affidavit.

My letter of August 10, 1993 was returned to the Law Society marked "unclaimed". True copies of Canada Post documentation, being an unsigned Acknowledgement of Receipt of a registered item and Canada Post entries on the face of the envelope are attached hereto and form part of Exhibit "F" to this my affidavit.

I have had not further involvement with the Solicitor's file.

I make this affidavit for the purposes of the prosecution of the Solicitor for professional misconduct, particularized at paragraph 2(a) of Complaint D65/94 as follows:

- 2(a) He has failed to provided a complete reply to the Society regarding inadequacies that remained outstanding from the original letter of inadequacies in his books and records dated October 24, 1991, despite letters dated November 2, 1992, May 10, 1993, July 15, 1993, and August 16, 1993.

and for no other or improper purpose."

Particular 2(b)

Lorraine Campbell, an Examiner in the Audit and Investigation Department of the Law Society, in her affidavit sworn June 7, 1996, deposed as follows:

"In February, 1993, an audit of the books and records of Richard Michael Hugh Power (the "Solicitor") was authorized and assigned to me.

My review of the Society's files pertaining to the Solicitor cause me to believe that an earlier audit of the Solicitor had occurred in May, 1991, the results of which led to an allegation of professional misconduct detailed in the affidavit of Margot Devlin, Manager of the Law Society's Examiner Programs, sworn June 7, 1996, which I have read and believe to be true.

On April 14, 1993, I attended at the offices of the Solicitor. He was unavailable. I left my business card with the Solicitor's receptionist and asked her to have him contact me.

The Solicitor did not respond to by business card.

26th September, 1996

On April 16, 1993, I telephoned the offices of the Solicitor. I spoke with a lawyer sharing space with the Solicitor and he advised me that he would pass my message to the Solicitor if he saw him. A true copy of my notes of this telephone conversation is attached hereto and marked as Exhibit "A" to this my affidavit.

The Solicitor did not respond to my message of April 16, 1993.

On April 22, 1993, I telephoned the Solicitor's office. I was advised by the Solicitor's receptionist as I believed her that the Solicitor had not picked up my business card although he had been at the office a few times. A true copy of my notes of this telephone conversation is attached hereto and marked as Exhibit "B" to this my affidavit.

On June 2, 1993, I wrote to the Solicitor advising that I had been instructed to conduct an investigation of his practice and requesting that he contact me within fifteen (15) days to set up an appointment. A true copy of my letter dated June 2, 1993 is attached hereto and marked as Exhibit "C" to this my affidavit.

The Solicitor did not respond to my letter dated June 2, 1993.

On June 22, 1993, I again wrote to the Solicitor requesting a response to my letter of June 2, 1993. This letter was sent by registered mail and was returned to the Law Society marked "moved". A true copy of my letter dated June 22, 1993 and returned envelope are attached hereto and marked as Exhibit "D" to this my affidavit.

On July 15, 1993, I again wrote to the Solicitor enclosing a copy of my letter dated June 2, 1993 and requesting his response. This letter was sent by registered mail to the Solicitor's home address. The letter was returned to the Law Society marked "unclaimed". True copies of my letter dated July 15, 1993 and returned envelope are attached hereto and marked as Exhibit "E" to this my affidavit.

On August 16, 1993, I again wrote to the Solicitor requesting his response to my earlier letters. This letter was sent by registered mail addressed to the Solicitor at his home address and was returned to the Law Society marked "unclaimed". A true copy of my letter and returned envelope are attached hereto and marked as Exhibit "F" to this my affidavit.

On September 17, 1993, I again wrote to the Solicitor requesting his response to my earlier letters. The Solicitor was advised that if the matter was not resolved within two (2) weeks, the matter would be referred to the Discipline Committee. A true copy of my letter dated September 17, 1993 is attached hereto and marked as Exhibit "G" to this my affidavit.

To date, the Solicitor has not produced his books and records to the Law Society.

I make this affidavit for the purposes of prosecution of the Solicitor for professional misconduct particularized at paragraph 2(b) of Complaint D65/94 as follows:

- 2(b) He has failed to produce his books and records as required by section 18 of Regulation 708 under the Law Society Act.

and for no other or improper purpose."

COMPLAINT D214/94

Particular 2(a)

Lori Goodfield, a Staff Lawyer in the Complaints Department of the Law Society, in her affidavit sworn May 31, 1996, deposed as follows:

"The Complaint of June DeLorme"

On November 10, 1993, the Law Society received a letter from June DeLorme seeking assistance in a matter because her lawyer, Richard Michael Hugh Power (the "Solicitor") was "no longer in business". A true copy of Ms. DeLorme's letter is attached hereto and marked as Exhibit "A" to this my affidavit.

On November 25, 1993, I wrote to the Solicitor enclosing a copy of Ms. DeLorme's letter dated November 3, 1993 and I requested that he provide comments within two (2) weeks. A true copy of my letter dated November 25, 1993 is attached hereto and is marked as Exhibit "B".

The Solicitor did not respond to my letter dated November 25, 1993.

On December 10, 1993, a member of the Law Society Complaints staff telephoned the Solicitor's office and was advised that he had not been at that office since May, 1993. A true copy of the handwritten notes of the Law Society staff member Sophie Papanastasiou is attached hereto and marked as Exhibit "C" to this my affidavit.

On January 19, 1994, I wrote to the Solicitor, enclosing a copy of the letter of complaint of Ms. DeLorme and requesting the Solicitor's response. I reminded the Solicitor of his obligation to reply promptly to communications from the Law Society and that if his reply was not received within seven (7) days the matter would be referred to the Chair of Discipline. A true copy of my letter dated January 19, 1994 is attached hereto and marked as Exhibit "D" to this my affidavit.

The Solicitor did not respond to my letter dated January 19, 1994 and he has failed to reply at all to the complaint of Ms. DeLorme."

Particular 2(b)

Ms. Goodfield deposed as follows in her affidavit sworn May 31, 1996:

The Complaint of Anthony Yapp

"On February 15, 1990, the Law Society received a letter from Anthony Yapp complaining about the Solicitor's failure to wind up an estate matter. Mr. Yapp sought the Law Society's assistance. A true copy of his letter dated February 15, 1990 is attached hereto and marked as Exhibit "E" to this my affidavit.

On May 7, 1990, the Solicitor replied to a Law Society letter inviting his response to Mr. Yapp's complaint. A true copy of the Solicitor's letter dated May 7, 1990 is attached hereto and marked as Exhibit "F" to this my affidavit.

On June 14, 1990, Mr. Yapp replied to the Law Society in response to the Solicitor's letter dated May 7, 1990. A true copy of Mr. Yapp's letter dated June 14, 1990 is attached hereto and marked as Exhibit "G" to this my affidavit.

On November 5, 1990, the Solicitor provided a further response to the Law Society wherein he commented on the letter of Mr. Yapp dated June 14, 1990. A true copy of the Solicitor's letter dated November 5, 1990 is attached hereto and marked as Exhibit "H" to this my affidavit.

26th September, 1996

As the foregoing correspondence reveals, (Exhibits "E"- "H"), Mr. Yapp and the Solicitor disagreed as to whether Mr. Yapp had provided the Solicitor with the original will of Peter J. Yapp. This issue became the subject matter of further investigation and enquiry before the Complaints Commissioner.

On March 17, 1993, I wrote the Solicitor and asked him if he had or had not retained a copy of the will of Peter J. Yapp. A true copy of my letter dated March 17, 1993 is attached hereto and marked as Exhibit "I" to this my affidavit.

The Solicitor did not respond to my letter dated March 17, 1993.

On May 11, 1993, Law Society staffer Sophie Papanastasiou telephoned the Solicitor's office and was advised by the receptionist that he was uncertain as to when the Solicitor would be in the office. A message was left for the Solicitor asking him to call the Law Society. Another message was left on May 24, 1993. The notes of the Law Society staff are attached hereto and marked as Exhibit "J" to this my affidavit.

The Solicitor did not telephone the Law Society in response to the messages of May 11 and 14, 1993.

On May 26, 1993, I wrote to the Solicitor, enclosing a copy of my letter of March 17, 1993. I reminded the Solicitor of his obligation to reply promptly to communications from the Law Society and that the matter would be referred to the Chair of the Discipline Committee should his response not be received within seven (7) days. This letter was sent to the Solicitor by registered mail and was returned to the Law Society marked "moved". A true copy of my letter dated May 26, 1993 and the returned envelope are attached hereto and marked as Exhibit "K" to this my affidavit.

On June 21, 1993, I wrote to the Solicitor enclosing a copy of my letter dated May 26, 1993. I advised the Solicitor that the matter would be referred to the Chair of Discipline if his response was not received within seven (7) days. This letter was sent to the Solicitor at his residence by registered mail. A true copy of my letter of June 21, 1993 is attached hereto and marked as Exhibit "L" to this my affidavit.

The Solicitor did not respond to my letter dated June 21, 1993.

I make this affidavit in support of the Law Society's prosecution of the Solicitor for professional misconduct, particularized in Complaint D214/94 as follows:

- (a) He failed to provided a reply to the Law Society regarding a complaint by June DeLorme, despite letters dated November 25, 1993, and January 19, 1994; and
- (b) He failed to provide a reply to the Law Society regarding a complaint by Anthony P. Yapp, despite letters dated March 17, 1993, May 26, 1993 and June 21, 1993 and telephone messages left on May 11, 1993 and May 14, 1993,

and for no other or improper purpose."

26th September, 1996

COMPLAINT D78/96

Particulars (a) and (b)

Harvey Cantor, a Chartered Accountant who in 1992 retained the Solicitor to act for him in civil actions for the collection of fees owing to Mr. Cantor for professional services, in his affidavit sworn May 30, 1996, deposed as follows:

"In February 1993, I provided the Solicitor with two cheques as a retainer for the purposes of representing me in a collection actions against a particular client. Attached hereto and marked as Exhibit "A" to this my affidavit is a true copy of those cheques, totalling \$1,000.00

On June 22, 1993, I wrote to the Solicitor and I asked him to contact me to discuss the course of action to be taken against the client. Attached hereto and marked as Exhibit "B" to this my affidavit is a true copy of my letter dated June 22, 1993.

The Solicitor did not respond to my letter dated June 22, 1993.

On September 23, 1993, I again wrote to the Solicitor. I advised him that I had been trying to reach him without success over the last several weeks. I also advised the Solicitor not to negotiate the post-dated cheques which I had provided to him. I requested the Solicitor to contact me so as to discuss the status of my file. Attached hereto and marked as Exhibit "C" to this my affidavit is a true copy of my letter dated September 23, 1993.

The Solicitor did not respond to my letter dated September 23, 1993.

On November 8, 1993, I again wrote to the Solicitor and I requested that he release my file to Lucian Brenner of Direction Consulting. Attached hereto and marked as Exhibit "D" to this my affidavit is a true copy of my letter dated November 8, 1993.

The Solicitor did not respond to my letter dated November 8, 1993.

On February 1, 1994, I again wrote to the Solicitor. I enclosed a copy of my letter dated November 8, 1993. I requested the Solicitor to release my file, return my \$1,000.00 retainer and advise me of the status of my accounts. I also forwarded a copy of this letter to the attention of the Law Society of Upper Canada. Attached hereto and marked as Exhibit "E" to this my affidavit is a true copy of my letter dated February 1, 1994.

The Solicitor did not respond to my letter of February 1, 1994. He did, however, telephone me late one evening in the autumn of 1995 and he chastised me for copying my letter of February 1, 1994 to the Law Society of Upper Canada. To date, the Solicitor has not returned my file or retainer and he has not provided me with an accounting for the funds that I paid to him as a retainer.

I make this affidavit at the request of the Law Society of Upper Canada for the purposes of prosecution of the Solicitor for professional misconduct particularized at paragraphs 2 (a) and (b) of Complaint D78/96 as follows:

- (a) he failed to answer with reasonable promptness letters to him dated June 22, 1993, September 12, 1993, November 8, 1993 and February 1, 1994 from his client, Harvey Cantor, that required a reply;

26th September, 1996

- (b) he failed to account for monies entrusted to him by his client, Harvey Cantor,

and for no other improper purpose."

Particular (c)

Catherine Riches, a Complaints Officer employed by the Law Society, in her affidavit sworn June 4, 1996, deposed as follows:

"In early February, 1994, the Law Society received a copy of the letter of Harvey Cantor, C.A., dated February 1, 1994. The contents of this letter indicated that Mr. Cantor was dissatisfied with the performance of his lawyer, Richard Michael Hugh Power (the "Solicitor"). Attached hereto and marked as Exhibit "A" to this my affidavit is a true copy of Mr. Cantor's letter dated February 1, 1994.

On February 25, 1994, I wrote a letter to the Solicitor advising of the Law Society's receipt of Mr. Cantor's letter and I enclosed a copy. I invited the Solicitor to respond to the matter so as to provide me with information relevant to my evaluation of Mr. Cantor's complaint. Attached hereto and marked as Exhibit "B" to this my affidavit is a true copy of my letter dated February 25, 1994.

I have reviewed the handwritten notes of my co-worker, Marilyn Bayley, dated March 18, 1994 and it is my information and belief that she did, on March 18, 1994, telephone the Solicitor's office. Her notes indicate that she was unable to reach the Solicitor but was advised that he ceased practice in May, 1993. She also obtained the Solicitor's home telephone number which she called and received no response. Attached hereto and marked as Exhibit "C" to this my affidavit is a true copy of Ms. Bayley's notes.

Exhibit "C" also contains Ms. Bayley's notes of her March 23, 1994 telephone conversation with the Solicitor, who, it is my information and belief, advised Ms. Bayley that he would respond to the Law Society within a couple of weeks. These notes further indicate that the Solicitor recalled receiving my letter dated February 25, 1994.

On April 6, 1994, I again wrote to the Solicitor and I reminded him of his professional obligation to respond promptly to communications from the Law Society. I asked the Solicitor to respond within seven (7) days, or I would refer the matter to the Discipline Committee. Attached hereto and marked as Exhibit "D" to this my affidavit is a true copy of my letter dated April 6, 1994.

To date, the Solicitor has not responded to the Law Society regarding the complaint of Mr. Cantor.

I make this affidavit in support of the Law Society's prosecution of the Solicitor for professional misconduct, particularized at paragraph 2(c) of Complaint D78/96 as follows:

- (c) He failed to provide a reply to the Law Society regarding a complaint by his client, Harvey Cantor, despite letters dated February 25, 1994 and April 6, 1994 and a telephone conversation on March 23, 1994.

and for no other improper purpose."

Particular (d)

Irene Andrighetti, in her affidavit sworn June 14, 1996, deposed as follows:

26th September, 1996

"The Solicitor did not file his Forms 2/3 within 6 months of the fiscal year ending July 31, 1993 as required by s. 16(2) of Regulation 708 made under the Law Society Act.

On or about February 4, 1994, the Law Society forwarded to the Solicitor a Notice of Default in Annual Filing, a true copy of which is attached and is marked as Exhibit "F" to this my affidavit.

On or about March 7, 1994, the Law Society forwarded to the Solicitor by registered mail a Second Notice of Default in Annual Filing. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and in default in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to s. 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A true copy of this Second Notice is attached hereto and marked as Exhibit "G" to this my affidavit.

The Notice of March 7, 1994 was returned to the Law Society marked "unclaimed". A true copy of the returned envelope forms part of Exhibit "G" to this my affidavit.

The late filing fee began to accrue on March 21, 1994.

The Solicitor did not file his Forms 2/3 within 6 months of the fiscal year ending July 31, 1994 as required by Regulation 708 under the Law Society Act.

On or about February 3, 1995, the Law Society forwarded to the Solicitor a Notice of Default in Annual Filing, a true copy of which is attached and is marked as Exhibit "H" to this my affidavit.

On or about March 7, 1995, the Law Society forwarded to the Solicitor by registered mail a Second Notice of Default in Annual Filing. The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and in default in filings. The Solicitor was advised that once the fee amounted to \$1,500.00 and remained unpaid for four months, he was subject to suspension pursuant to s. 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. A true copy of this Second Notice is attached hereto and marked as Exhibit "I" to this my affidavit.

The Notice of March 7, 1995 was returned to the Law Society marked "refused by addressee". A true copy of the returned envelope is attached hereto and is marked as Exhibit "J".

The late filing fee began to accrue on March 27, 1995.

The Solicitor did not file his Forms 2/3 within 6 months of the fiscal year ending July 31, 1995 as required by s. 16(2) of Regulation 708 under the Law Society Act.

On or about February 6, 1996, the Law Society forwarded to the Solicitor a Notice of Default in Annual Filing, a true copy of which is attached hereto and is marked as Exhibit "K" to this my affidavit.

To date, the Solicitor has not provided the outstanding filings.

26th September, 1996

I make this affidavit in support of the Law Society's prosecution of the Solicitor for professional misconduct and for no other improper purpose."

RECOMMENDATION AS TO PENALTY

The panel recommends that the Solicitor be disbarred.

REASONS FOR RECOMMENDATION

The Solicitor has been disciplined on two previous occasions.

On November 13, 1990 he was reprimanded in Committee for failing to reply to communications from the Law Society concerning complaints received from clients.

On September 1, 1992 he was found guilty of professional misconduct for failing to reply to the Law Society regarding deficiencies in his books and records and for his failure to file forms for the fiscal year ended July 31, 1991. He was reprimanded in Convocation on March 23, 1993 and ordered suspended from that date until his forms were filed. He was also ordered to pay costs in the amount of \$1,000.

On the latter occasion the Discipline Hearing Panel observed in its reasons for its recommendation as to penalty that the Solicitor's failure to reply to the Law Society regarding deficiencies in the examination of his books and records and his refusal to appear before the Discipline Hearing Panel to explain his misconduct "clearly indicate unwillingness on the part of the Solicitor to be governed by the Society".

The complaints that the present Discipline Hearing Panel has found established demonstrate the Solicitor's ungovernability even more conclusively. The panel has been provided with no explanation for the Solicitor's persistent failures to reply to communications from the Law Society, to produce books and records, and to file required forms. His failure to account for monies entrusted to him by his client Harvey Cantor, or even to respond to correspondence inquiring about the matter, is particularly troubling, as it demonstrates that the Solicitor's disregard for his professional obligations extends not only to the Law Society but also to his clients.

In the absence of any explanation for the Solicitor's conduct, the Discipline Hearing Panel considers the Solicitor's disbarment to be the only realistic option open to it.

Richard Michael Hugh Power was called to the Bar and admitted as a Solicitor of the Supreme Court of Ontario on the 10th day of April, 1984.

ALL OF WHICH is respectfully submitted

DATED AT TORONTO this 5th day of July, 1996

Gavin MacKenzie, Chair

There were no submissions, the finding was confirmed and the Report adopted.

26th September, 1996

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

Mr. Brown made submissions in support of the recommended penalty.

It was moved by Mr. Millar, seconded by Mr. Wilson that the solicitor be disbarred.

Carried

Resumption of the Lawrence Charissio DUCAS matter

Mr. Gover on behalf of the solicitor requested a 2 month adjournment on the solicitor's undertaking not to practise.

The solicitor agreed to waive the requirement of a seised committee.

It was moved by Mr. Millar, seconded by Ms. Cronk that the matter be adjourned to the November Convocation and that the solicitor undertake not to practise.

Carried

APPLICATION FOR READMISSION

Re: Frank Frederick SHUNOCK - Sault Ste. Marie

The Secretary placed the matter before Convocation.

Mr. Brown appeared for the Society. Mr. William Trudell appeared for the applicant who was present.

A preliminary matter was introduced by Mr. Topp. Mr. Topp advised that he had received a letter from a member in Sault Ste. Marie requesting a 1 month adjournment of the matter in order that submissions could be made by the local Bar.

It was moved by Mr. Topp, seconded by Mr. Swaye that the matter be adjourned for 1 month.

Both counsel advised that they had not seen the letter in question.

Mr. Brown advised that the Algoma Bar had been informed of the hearing.

Mr. Trudell was concerned with the tone and timing of the letter.

In light of Mr. Brown's submissions of both counsel the motion to adjourn was defeated.

The Report dated 9th September, 1996 was filed as Exhibit 1.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF the Law Society Act

AND IN THE MATTER OF Frank Frederick Shunock
of the City of Sault Ste. Marie

AND IN THE MATTER OF an Application for Readmission
to the Law Society of Upper Canada

26th September, 1996

REASONS FOR DECISION

PANEL:

Mr. Stephen T. Goudge, Q.C.	-	Chair
Mr. Larry A. Banack		
Mr. Robert B. Aaron		

APPEARANCES:

Mr. Michael Brown	-	for the Society
Mr. William Trudell	-	for the Applicant

DATE:

Thursday, August 8, 1996

APPLICATION FOR READMISSION TO THE LAW SOCIETY OF UPPER CANADA:
FRANK FREDERICK SHUNOCK

This is an application by Frank Frederick Shunock for readmission as a member of the Law Society of Upper Canada.

This matter comes before this Committee at the direction of Convocation which considered a report of a prior Committee on the same application. The prior Committee recommended against readmittance. Convocation directed that the matter be sent back for a new hearing, because the prior Committee applied a stricter standard than that found in the Law Society's jurisprudence. The prior Committee felt it must be satisfied that there is no possibility of harm to the public by a repetition of criminal behaviour.

The Applicant was called to the Bar on March 26, 1965. He was disbarred on October 15, 1976, having been found guilty of conduct unbecoming a barrister and solicitor in that he had pleaded guilty to the following criminal charges:

- (a) that he, on or about the 4th day of August, 1976, converted, with intent to defraud, Gertrude Sroka, a client, of monies entrusted to him as a trustee contrary to Section 296 of the Criminal Code of Canada;
- (b) that he, on or about the 4th day of August, 1976, unlawfully and wilfully attempted to obstruct justice by causing William George Vardy and Harold David Hull to fabricate evidence, contrary to Section 127(2) of the Criminal Code of Canada;
- (c) that he, on or about the 4th day of August, 1976, unlawfully conspired to commit an indictable offence, namely trafficking in a narcotic, contrary to Section 423(1)(d) of the Criminal Code of Canada.

The Applicant had a discipline history prior to his disbarment. On January 15, 1971, he was reprimanded in Convocation, having been found guilty of abuse of the Ontario Legal Aid Plan. On January 25, 1973, he was reprimanded in Committee for failure to respond to correspondence from the Society concerning a client's complaint. In September of 1974, he was reprimanded in Convocation for submitting improper Legal Aid accounts. The Applicant received a sentence of seven years in custody for his criminal convictions. He was released after serving two years and six months.

26th September, 1996

The Committee had before it the full record of proceedings before the prior Committee. It also received additional correspondence not before the prior Committee. It heard additional evidence from the Applicant and evidence from his psychiatrist, Dr. Wood Hill, who did not testify before the prior Committee.

Mr. Brown, for the Society, took no position on the application, but in his usual way canvassed the evidence and the law with a helpful thoroughness and fairness.

Counsel were agreed on the legal standard this Committee should apply. That is the standard set out in the *Goldman* case. This Committee concurs that that case sets the guidelines for an application such as this.

In essence, those guidelines are as follows:

Given the Society's duty to protect the public interest, a heavy onus rests on an Applicant for readmission. The Applicant must show very special circumstances that demonstrate that the Applicant has entirely purged his guilt, rehabilitated himself, and is now of good character. The Committee must be satisfied that there is substantial and satisfactory evidence to show that there is no probability of the Applicant offending in the future. A further relevant consideration is whether a sufficient period of time has elapsed between disbarment and the application for readmission.

There is no doubt that the criminal conduct which resulted in the Applicant's disbarment was very serious. Even though it happened 20 years ago and at a time when, on the evidence, the Applicant was suffering significant personal problems due in part to the failure of his marriage, the gravity of these acts underlines the need for this Committee to be satisfied of Mr. Shunock's complete rehabilitation.

The Committee had before it the transcript of the Applicant's evidence given to the prior Committee. It also heard fresh evidence from Mr. Shunock in this hearing. That evidence was given in a straight forward, mature and, at times, moving fashion. The Applicant did not hesitate to acknowledge the gravity of his conduct 20 years ago. He accepted full responsibility for it and sought to blame no one else. He described the pain of his incarceration and his long, slow, but steady return to a modestly successful position in society. Since his release he has been engaged in real estate and other commercial transactions which finally in the last few years have reached a business level that has permitted him a modestly successful income. He described the strong support he has received from his extended family, and particularly from his second wife. His wait to reapply was due to a strong desire not to fail in his reapplication and to ensure that he had indeed achieved the necessary rehabilitation.

His motivation to return to practice is, as he put it, motivated by his love of the law and his desire to serve as a professional. His readmission would also be in some sense a final affirmation of his rehabilitation. He clearly understands his need, should he be readmitted, to requalify himself to practice law.

The Committee had before it numerous letters. All save three were extremely supportive. Those three, resulting from the advertising of this application, were all written by people who on the evidence had had no contact with the Applicant for many years. The Committee therefore discounted their contents, since the authors could not speak to the Applicant's current situation.

There were many letters from family and friends, speaking to the good character of the Applicant. The common theme of these letters was that Mr. Shunock is now a person of honesty and integrity, quite different from the individual who engaged in the aberrant behaviour of the early 1970's. Many commented upon those few years as being entirely inconsistent with the man they had known before and that they now support.

26th September, 1996

There were also a number of letters from members of the profession, including the Judge for whom he had articulated, that were equally supportive.

The Committee received the benefit of evidence from Dr. Wood Hill, a qualified psychiatrist who has seen the Applicant on four occasions. Dr. Hill's evidence was most persuasive. He indicated that the Applicant has dealt with his aberrant conduct of the early 1970's in a most mature manner. In the Doctor's view, the Applicant's soul-searching has resulted in an individual who now knows and understands himself and his limits. As the Doctor said in his report: "He is a sober, wiser man with his priorities clear ... I do not see him as an individual who would again deviate from a stable lifestyle." His evidence was clear that, from a psychiatric point of view, there was no probability of the Applicant engaging in criminal activity.

The Committee also heard evidence from Michael Ingram, barrister and solicitor, of Coutts, Crane, Ingram. Speaking on behalf of his partners, Mr. Ingram indicated that he has had a number of discussions with Mr. Shunock as a result of which he and his partners have satisfied themselves entirely that Mr. Shunock is fully rehabilitated. In the circumstances, he expressed his firm's full willingness to provide Mr. Shunock with space in Toronto, supervise his practice and provide him with the appropriate mentoring. Mr. Ingram expressed his full willingness to co-sign on any trust account that Mr. Shunock will have. The Applicant has indicated both to the Committee and to Coutts, Crane, Ingram his desire not to return to the kind of practice that he had prior to his disbarment, namely criminal law. Rather, he proposes to provide legal advice to the sorts of clients that he has been doing business with over the last 20 years in the real estate and commercial field.

Finally, the Committee had before it the pardon which has been recently granted to Mr. Shunock by the federal authorities in connection with his criminal convictions.

In all the circumstances, the Committee is of the view that the tests set out in *Goldman* have been fully met. The Applicant has shown by a long course of conduct that he is a person to be trusted, that he has rehabilitated himself and that his character is now unimpeachable. In the Committee's view, he should be readmitted to the practice of law. However, it would be appropriate in the circumstances for that readmission to be on condition that, until further decision of the Treasurer or her designee, his practice be supervised by Mr. Ingram and his partners, and that Mr. Ingram be a co-signer of his trust account. Moreover, because of his absence from the profession, his readmission ought to be conditional upon him completing the educational requirements deemed appropriate by the Society's Director of Education.

Accordingly, subject to these conditions, we recommend the reinstatement of Frank Frederick Shunock as a member of the Law Society of Upper Canada.

ALL OF WHICH is respectfully submitted

DATED this 9th day of September, 1996.

Stephen T. Goudge, Q.C., Chair

Submissions were made by both counsel in support of the Committee's recommendation for reinstatement of the applicant.

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

26th September, 1996

It was moved by Mr. Topp, seconded by Mr. Cole that the applicant obtain permission of the Law Society to engage in practice in other areas of the law.

Lost

It was moved by Mr. MacKenzie, seconded by Ms. Cronk that the wording in the 4th paragraph on page 4 - "...further decision of the Treasurer or her designee..." be deleted and the words "...further decision of a Committee of Convocation" be substituted.

Carried

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

Carried

Counsel, the applicant, the reporter and the public were recalled and informed of Convocation's decision that the applicant be reinstated, on the condition that until further decision of a Committee of Convocation his practice be supervised by Mr. Ingram and his partners and that Mr. Ingram be a co-signer of his trust account. In addition his readmission be conditional upon him completing the educational requirements.

DISCIPLINE COMMITTEE

Re: Thomas George RICHARDS - Owen Sound

The Secretary placed the matter before Convocation.

Mr. Bobesich withdrew from Convocation.

Ms. Brooks 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 9th July, 1996, together with the Affidavit of Service addressed to the solicitor at 876 2nd Avenue East, Owen Sound sworn 6th August, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 30th July, 1996 (marked Exhibit 1) together with the Report and Affidavit of Service addressed to the solicitor at 26 Nepean Street, Ottawa sworn 19th July, 1996 by Louis Katholos that he had effected service by registered mail on 12th July, 1996 (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

Gary L. Gottlieb, Q.C.

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

Allan Maclure
for the Society

26th September, 1996

THOMAS GEORGE RICHARDS
of the City
of Owen Sound
a barrister and solicitor

Not Represented
for the solicitor

Heard: May 8, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On October 31, 1995 Complaint D332/95 was issued against Thomas George Richards alleging that he was guilty of professional misconduct.

The matter was heard in public on May 8, 1996 before Gary L. Gottlieb, Q.C. sitting as a single bencher. The Solicitor did not attend the hearing, nor was he represented by counsel. Allan Maclure appeared on behalf of the Law Society.

DECISION

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

Complaint D332/95

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

Service

The Committee was satisfied that the Solicitor had been served in compliance with the Law Society Act and that the matter should proceed in the Solicitor's absence.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Thomas George Richards be reprimanded in Convocation if he has made the requisite filing, failing which, that he be suspended for a period of one month, commencing at the conclusion of any administrative suspension, and indefinitely thereafter until his filings are completed.

26th September, 1996

REASONS FOR RECOMMENDATION

The Solicitor's professional misconduct herein consisted of failing to file with the Society within 6 months of the termination of the Solicitor's fiscal year ending January 31, 1995, a certificate in the form prescribed by the Rules and a report completed by a public accountant and signed by the Solicitor in the form prescribed by the Rules, thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

The Solicitor has no discipline history.

The Law Society's annual filings are mandatory because of the Society's obligation to govern its members with regard to the protection of the public. If annual filings are not made, it prevents the Society from ensuring that monies held in trust by the Solicitor, if any, are properly preserved, without going to the added expense by the Society of performing an audit.

The recommendation is therefore, that the Solicitor be reprimanded in Convocation if he has made the requisite filing, failing which, that he be suspended for a period of one month, commencing at the conclusion of any administrative suspension, and indefinitely thereafter until his filings are completed.

Thomas George Richards was called to the Bar on April 18, 1988.

ALL OF WHICH is respectfully submitted

DATED this 9th day of July, 1996

Gary L. Gottlieb, Q.C.

There were no submissions, the finding was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if his filings were made failing which he be suspended for a period of 1 month commencing at the conclusion of any administrative suspension and indefinitely thereafter until his filings are completed.

Ms. Brooks advised that the filings were not completed and supported the 1 month suspension.

It was moved by Mr. Wilson, seconded by Ms. Eberts that the solicitor be suspended for a period of 1 month and indefinitely thereafter until the filings were completed.

Carried

Re: Peter TENSUDA - Brampton

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

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

26th September, 1996

Convocation had before it the Report of the Discipline Committee dated 26th April, 1996, together with the Affidavit of Service sworn 29th May, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 22nd May, 1996 (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

Heather J. Ross, Chair
Paul Copeland
Robert B. Aaron

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

Glenn Stuart
for the Society

PETER TSENUDA
of the City
of Brampton
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 7, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 22, 1995 Complaint D315/95 was issued against Peter Tensuda alleging that he was guilty of professional misconduct.

The matter was heard in public on February 7, 1996 before this Committee comprising Heather J. Ross, Chair, Paul Copeland and Robert B. Aaron. The Solicitor attended the hearing and represented himself. Glenn Stuart appeared on behalf of the Law Society.

DECISION

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

Complaint D315/95

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

- b) he failed to produce books and records to a Law Society examiner who attempted to conduct an audit of his practice pursuant to Section 18 of Regulation 708 despite the Society's visit on October 4, 1994; letters dated March 6, 1995, April 5, 1995, May 3, 1995 and June 14, 1995; and telephone requests on January 3, 1995, January 4, 1995, January 5, 1995, January 6, 1995, March 3, 1995 and May 18, 1995.

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 D315/95.

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 D315/95 and admits the particular contained therein. The Solicitor admits the facts set out in this Agreed Statement of Facts but does not admit that they constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 10, 1986. He is not currently practising law.

Particular 2(a)

Failure to file for the fiscal year ended January 31, 1995

5. The Solicitor's fiscal year end is January 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 31, 1995, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated August 16, 1995 (Document Book, Tab 1) was forwarded to the Solicitor by the Law Society.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 18, 1995 (Document Book, Tab 2). The Solicitor was advised that he had not taken the necessary steps to bring his filings up-to-date and that a fee of \$10.00 per day is applied on filings made after their due dates and on defaults in filings to a maximum of \$1,500.00. The Solicitor was advised that once the fee remained unpaid for four months, he was subject to suspension pursuant to Section 36 of the Law Society Act. The Solicitor was advised that the attracting and paying of a late filing fee did not relieve him from the obligation to make annual filings and that he might be brought before the Discipline Committee for failure to file. The Society's Second Notice was signed for and delivered on October 12, 1995. The Solicitor did not reply to this correspondence.

8. The late filings fee began to accrue on October 3, 1995.

9. The Solicitor has not provided the outstanding filing.

10. The Solicitor states that he has not had the necessary funds, nor does he now, have the necessary funds to have his Form 3 prepared or to have any books and records which may be missing reconstructed. The Society accepts that it has no evidence to the contrary.

Particular 2(b)

Failure to produce books and records to a Law Society examiner

11. On October 4, 1994, a Law Society examiner attended at the Solicitor's office, unannounced. The Solicitor advised that although he was employed by Ronald Folkes, he maintained a trust account with a balance of approximately \$1,200 from his previous practice. The examiner requested the Solicitor close the trust account from his previous practice and forward to the Society documentation indicating the proper disbursement of the funds and the closure of the account. The Solicitor was also requested to provide a letter from Ronald Folkes confirming his employment and that Mr. Folkes was responsible for any trust transactions. A copy of the Society's handwritten notes, dated October 4, 1994, are contained in the Document Book, Tab 3.

12. By letter dated October 13, 1994 (Document Book, Tab 4) to the Law Society, Mr. Folkes confirmed the Solicitor's employment since April 14, 1994 and that he had previously been employed from May 1, 1992 to September 7, 1993. Mr. Folkes states that he understood the Solicitor had not practised from September 8, 1993 to April 14, 1994. Mr. Folkes advised that the Solicitor's remuneration is based upon paid billings and as such he is treated as an independent contractor. Mr. Folkes confirmed that all of the Solicitor's transactions were processed through his firm's trust and general accounts.

13. By letter dated October 13, 1994 (Document Book, Tab 5) the Solicitor advised the Law Society that he was in the process of closing out his trust account. The Solicitor indicated that he would provide a copy of the October, 1994 bank statement, in early November, 1994 indicating a zero balance. The Solicitor further indicated that he would also forward the reconciling documentation. The Solicitor did not forward any documentation to the Society.

14. The examiner left a telephone message for the Solicitor on January 3, 1995 requesting he return the call. A copy of the Law Society's handwritten Telephone Transaction form, dated January 3, 1995 is contained in the Document Book, Tab 6.

15. The Solicitor returned the Law Society's call on January 3, 1995 by leaving a message for the examiner. The Solicitor advised that he was out of town that same day but that he would return the following morning. The Solicitor advised that he still had to complete a few more "things" before he could bring his trust account to a zero balance. The Solicitor stated that he would complete those "things" by the end of the month. A copy of the Law Society's handwritten Telephone Transaction form, dated January 3, 1995 is contained in the Document Book, Tab 7.

16. After having exchanged telephone messages on January 4, 1995, January 5, 1995 and January 6, 1995, the examiner and the Solicitor spoke on January 6, 1995. The examiner reiterated to the Solicitor that his trust account was to be closed by January 31, 1995 and he was to forward confirming documentation to the Society. No documentation was received by the Law Society. A copy of the Law Society's handwritten Telephone Transaction forms, dated January 4, 1995, January 5, 1995 and January 6, 1995 are contained in the Document Book, Tab 8.

26th September, 1996

17. The examiner left a telephone message for the Solicitor at his office on March 3, 1995 requesting he return the call. A copy of the Law Society's handwritten Telephone Transaction forms, dated March 3, 1995 is contained in the Document Book, Tab 9.

18. The Solicitor returned the Society's call on March 3, 1995. The Solicitor left a telephone message confirming that the trust account now had a zero balance. He further advised that he would courier the supporting documentation on March 6, 1995. A copy of the Law Society's handwritten Telephone Transaction forms, dated March 3, 1995 is contained in the Document Book, Tab 10.

19. The Solicitor left a telephone message for the examiner on March 7, 1995. The Solicitor advised that the documentation would be forwarded that same day by courier. A copy of the Law Society's handwritten Telephone Transaction forms, dated March 7, 1995 is contained in the Document Book, Tab 11.

20. By letter dated March 7, 1995 (Document Book, Tab 12), the Solicitor provided the Law Society with a copy of his January, 1995 trust bank statement indicating a zero balance.

21. By letter dated March 16, 1995 (Document Book, Tab 13), the examiner requested the Solicitor forward copies of the trust listings and trust bank reconciliations, including bank statements, at September 30, 1994, October 31, 1994, November 30, 1994 and December 31, 1994; copies of his trust journals for the same periods showing all disbursements and receipts if any; the trust disbursement journal for the month of January, 1995; and to advise of the date on which the trust bank account was closed. The Solicitor was requested to give this matter his prompt attention. No reply was received.

22. By registered mail dated April 5, 1995 (Document Book, Tab 14), the Law Society forwarded to the Solicitor a copy of its March 16, 1995 letter. The Solicitor was requested to respond by April 24, 1995.

23. The Solicitor left a telephone message for the examiner on April 7, 1995 advising that he received the Society's March 16, 1995 and April 5, 1995 letters. The Solicitor advised that he would respond by April 24, 1995. A copy of the Law Society's handwritten Telephone Transaction forms, dated March 7, 1995 is contained in the Document Book, Tab 15. No reply was received.

24. By registered mail dated May 3, 1995 (Document Book, Tab 16), the Law Society confirmed the Solicitor's telephone message of April 7, 1995 and enclosed a copy of its March 16, 1995 and April 5, 1995 letters. The Solicitor was advised that should he fail to provide the required material by May 19, 1995, the matter would be referred to Discipline Counsel. The Law Society's May 3, 1995 letter was signed for and delivered on May 8, 1995. No reply was received.

25. The Solicitor left a message for the examiner on May 18, 1995 advising that "it shouldn't be much longer". A copy of the Law Society's handwritten Telephone Transaction forms, dated May 18, 1995 is contained in the Document Book, Tab 17.

26. The examiner spoke with the Solicitor by the telephone on May 18, 1995. The Solicitor advised that he ceased practising in March, 1995 and was now employed full-time by "Remax". The Solicitor advised that although he had been very busy, he would forward the documentation as soon as possible. A copy of the Law Society's handwritten Telephone Transaction forms, dated May 18, 1995 is contained in the Document Book, Tab 18.

26th September, 1996

27. By registered mail dated June 14, 1995 (Document Book, Tab 19), the Law Society forwarded to the Solicitor copies of its earlier letters and confirmed the examiner's telephone conversation with the Solicitor on April 7, 1995 and May 18, 1995. The Solicitor was advised that should this matter not be resolved within two weeks of the date of this letter, the matter would be referred to counsel to the Discipline Committee. The Solicitor was advised that no further extensions would be given. The Law Society's June 14, 1995 letter was signed for and delivered on June 29, 1995.

28. The examiner spoke with the Solicitor by telephone on July 5, 1995. The Solicitor was advised that the deadline to provide the material had passed. The Solicitor indicated that he would provide the material soon. The Solicitor confirmed that he would contact the examiner the morning of July 7, 1995. A copy of the Law Society's handwritten Telephone Transaction forms, dated July 5, 1995, is contained in the Document Book, Tab 20. The Solicitor did not contact the Society.

29. To date, the Solicitor has not provided the required documentation to the Law Society.

V. DISCIPLINE HISTORY

30. The Solicitor was found guilty of professional misconduct and reprimanded in committee on June 15, 1993 with respect to his failure to file for the fiscal year ended January 31, 1992.

31. The Solicitor was found guilty of professional misconduct and reprimanded in committee on July 19, 1994 with respect to his failure to file for the fiscal year ended January 31, 1993.

32. The Solicitor was guilty of professional misconduct, reprimanded in committee and ordered to pay costs \$600.00 at \$50.00 per month beginning November 1, 1995 with respect to his having acted in a conflict of interest and having failed to adequately serve his client.

DATED at Toronto this 7th day of February, 1996."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Peter Tensuda be suspended for one month with respect to particular 2(a) and four months with respect to particular 2(b), such suspension to run concurrently, commencing at the conclusion of any administrative suspension and continue thereafter until such time as the Solicitor has made his filings and produced his books and records to the Law Society.

The Committee further recommends that the Solicitor pay Law Society costs in the amount of \$300.00 and that they be paid within six months.

26th September, 1996

REASONS FOR RECOMMENDATION

Having made a finding of professional misconduct on particulars 2(a) and (b), the Committee considered the Solicitor's prior discipline history. The Solicitor was found guilty of professional misconduct on two prior occasions for failing to file; first, for the year ended January 31, 1992 and second, for the year ended January 31, 1993, for which he was reprimanded in committee.

The Committee made a finding of professional misconduct with respect to failure to file for the year ending January 31, 1995. The panel was cognizant of the fact that the Solicitor in his submissions indicated that on particular 2(a), the failure to file, he would like to comply but due to dire economic difficulties, had been unable to do so. We take that fact into account, and it is the decision of this Committee that on particular 2(a) the Solicitor be suspended for a period of one month to follow the conclusion of any administrative suspension.

Apart from the two failures to file in his disciplinary history, the Solicitor was also found guilty of professional misconduct and ordered to pay costs to the Society with respect to his having acted in a conflict of interest and failing to adequately serve a client.

The Committee has also found the Solicitor guilty of professional misconduct in regard to particular 2(b) of the complaint which the Committee views as the more egregious of the misconduct. He has failed to produce books and records to the Law Society with such a request now having been outstanding since October 4th, 1994. The Solicitor had until the date of the hearing, February 7th, 1996, to make some effort toward compliance to the extent that he does have some records, but he has failed to do so.

The Committee observed that the Solicitor is bordering on ungovernability. Trust account records are a critical aspect for the Law Society to ensure the protection of the public interest.

It is the decision and recommendation of the Committee, therefore, that with respect to particular 2(b), the Solicitor be suspended for a period of four months to run concurrently with the other suspension but also to follow the conclusion of any administrative suspension.

The Solicitor shall pay costs in the sum of \$300.00. The Solicitor indicated that due to his economic circumstances, he requires a year to pay. There was no evidence to the contrary. The recommendation of the Committee is that the costs be paid within six months.

Peter Tensuda was called to the Bar on April 10, 1986.

ALL OF WHICH is respectfully submitted

DATED this 26th day of April, 1996

Heather J. Ross, Chair

Mr. Stuart asked that a correction be made to the Report as follows:

- page 5, paragraph 13, 4th line - sentence should read "The Solicitor further indicated..." not indicted.

26th September, 1996

Mr. Stuart advised that due to the lack of funds the solicitor was unable to attend Convocation and requested that the matter proceed in his absence.

The finding of professional misconduct was confirmed and the Report was adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a total of 5 months, such suspension to run concurrently commencing at the conclusion of any administrative suspension and continue thereafter until such time as the solicitor made his filings and produced his books and records. The Committee further recommended that the solicitor pay costs in the amount of \$300 to be paid within 6 months.

Mr. Stuart advised that the filings had not been made.

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

Carried

The Treasurer withdrew from Convocation and Mr. Murray took the Chair as Acting Treasurer.

Re: Allan Ian WEXLER - Markham

The Secretary placed the matter before Convocation.

Ms. Curtis withdrew for this matter.

Mr. Stuart appeared for the Society. Mr. Gover appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 16th July, 1996, together with an Affidavit of Service addressed to the solicitor at 44 Knollview Crescent, Willowdale sworn 6th August, 1996 by Louis Katholos that he had effected service on the solicitor on 30th July, 1996 (marked Exhibit 1) together with the Report and Affidavit of Service addressed to the solicitor at 200 Town Centre Blvd. Markham sworn 6th August, 1996 by Louis Katholos that he had effected service by registered mail on 19th July, 1996 (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (marked Exhibit 3). 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

Carole Curtis, Chair
Susan Elliott
Shirley O'Connor

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

Georgette Gagnon
for the Society

26th September, 1996

ALLAN IAN WEXLER
of the City
of Markham
a barrister and solicitor

Not Represented
for the solicitor

Heard: February 14 & 15, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 20, 1994, Complaint D458/93 was issued against Allan Ian Wexler alleging that he was guilty of professional misconduct.

The matter was heard in public on February 14 and 15, 1995, before this Committee comprised of Carole Curtis, Chair, Susan Elliott and Shirley O'Connor. The Solicitor attended the hearing and represented himself. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D458/93

2. a) He practised law while his rights and privileges as a member were suspended from June 1, 1993 to July 28, 1993;
- b) He breached section 14(12) of Regulation 708 under the Law Society Act by failing to maintain sufficient balance on deposit in his trust account to meet all his obligations with respect to money held in trust for clients between September, 1992 and March, 1993.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D458/93 and is prepared to proceed with a hearing of this matter on February 14 and 15, 1995.

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 D458/93 and this agreed statement of facts and admits the particulars and facts contained herein. The Solicitor does not admit that the facts alleged in the complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 29, 1977. He practises as a sole practitioner in the City of Markham, Ontario.

Particular 1(a) The Solicitor breached an Order of Convocation by continuing to practice law while under suspension during the period June 1, 1993 to July 28, 1993.

5. The Solicitor received three Errors & Omissions Insurance Levy Notices dated December 7, 1992, April 1, 1993 and May 3, 1993 for the levy coverage period January 1, 1993 to June 30, 1993. All Notices advised the Solicitor that should he fail to pay any fee or levy within four months after the date on which payment is due, pursuant to Section 36 of the Law Society Act, Convocation may order that his rights and privileges as a member be suspended for such time and on such terms that it considers proper in the circumstances.

6. On or about April 29, 1993, the Solicitor sent a cheque to the Law Society of Upper Canada dated April 29, 1993 in the amount of \$2,533.23 for payment of the Errors & Omissions Insurance Levy. (Tab 1, Document Book)

7. The Law Society sent a registered letter to the Solicitor advising him that his cheque in the amount of \$2,533.23 could not be processed by reason of insufficient funds. The Law Society asked the Solicitor to provide it with a certified replacement cheque and further advised the Solicitor that if payment was not received by Convocation on or before May 28, 1993 his rights and privileges as a member would be suspended as of June 1, 1993. (Tab 2, Document Book)

8. The Law Society's letter referred to in paragraph 7 above was sent registered mail and returned unclaimed to the Law Society on May 18, 1993 although it had been forwarded to a new address of the Solicitor's (#202, 200 Town Centre Blvd., Markham) on the envelope from his former address (7030 Woodbine Avenue, 5th Floor, Markham). (Tab 3, Document Book)

9. By registered letter dated June 1, 1993 the Law Society advised the Solicitor that his rights and privileges as a member had been ordered suspended by Convocation effective June 1, 1993 as a result of his failure to pay his errors & omissions insurance levy. The letter was returned by the Post Office marked "unclaimed" and had been sent to the Solicitor's former address at 7030 Woodbine Avenue, Markham. (Tab 4, Document Book)

10. The Solicitor will give evidence that he first learned he was suspended about one week after June 1, 1993. The Solicitor states that a colleague told him he was suspended because he did not receive the Society's registered letter of June 1, 1993 as it was sent to his former address.

11. By letter dated June 24, 1993 the Solicitor provided the Law Society with another uncertified cheque in the sum of \$2,533.23 in respect of the outstanding insurance levy. The Solicitor stated in his letter to the Society that he trusted he was now able to continue in his practice. (Tab 5, Document Book)

12. The Law Society's accounting department received the Solicitor's letter of June 24, 1993 on June 25, 1993. On July 5, 1993 a Law Society staff person telephoned the Solicitor and left a message advising him that his cheque would be returned to him because it was uncertified and that a certified cheque was required for reinstatement. (Tab 5, Document Book)

13. The Solicitor will give evidence that he did not receive this message. The Society does not accept this explanation.

14. On July 9, 1993 the Law Society changed the Solicitor's address from 7030 Woodbine Avenue, Markham to #202, 200 Town Centre Blvd., Markham, on the Law Society's computer.

15. On July 20, 1993 the Solicitor received the Society's letter requesting that the outstanding levies be paid by certified cheque. (Tab 6, Document Book)

16. The Solicitor will say that he only realized he was still suspended when he received the letter from the Law Society on July 20, 1993 returning his cheque because it was not certified. On or about July 28, 1993 he sent a certified cheque to the Law Society.

17. On July 28, 1993 the Solicitor provided the Law Society with a certified cheque in payment of the outstanding levy.

18. By letter dated August 12, 1993 the Law Society advised the Solicitor that payment of the outstanding levy had been received and he was reinstated to the practise of law on July 28, 1993. (Tab 7, Document Book)

19. The Solicitor continued to practise law from June 1, 1993 to July 28, 1993 while suspended from the practise of law as evidenced by the following:

- (i) The Solicitor issued cheques from his trust account on June 1, 8, 16, 17, 24, 25 and 28, 1993. (Tab 8, Document Book)
- (ii) The Solicitor's trust receipts and disbursement journal for June/July 1993 indicates funds were deposited into the Solicitor's trust account and disbursed. (Tab 9, Document Book)
- (iii) The Solicitor's trust bank statement for June 1993 shows the issuance and deposit of cheques through the Solicitor's trust account. (Tab 10, Document Book)

20. The Solicitor will say that he practised law from June 24, 1993 to July 28, 1993 while suspended because he honestly believed he was able to practise as he had provided the Law Society with a replacement cheque for payment of his insurance levy.

21. By way of further explanation, the Solicitor will give evidence that he did not practise law between June 1 and June 24, 1993, his office was closed and he remained at home. He did not advise his clients during this 20 day period that he was suspended. He will testify that clients left messages on his office answering machine which he returned after June 24, 1993. The Society does not accept this explanation.

Particular 1(b) The Solicitor breached section 14(12) of Regulation 708 of the Law Society Act by failing to maintain sufficient balances on deposit in his trust account to meet all his obligations with respect to money he held in trust for clients between September 1992 and March 1993.

22. On July 21 and August 4, 1993 a Law Society auditor attended at the Solicitor's office and commenced an audit of the Solicitor's practice.

26th September, 1996

23. The auditor found insufficient balances in the Solicitor's trust account resulting in a shortage of approximately \$3,182.32.

24. The Solicitor stated to the auditor that he was aware there were shortages in several of his clients' trust ledger accounts but knew there were account receivables from other clients which he could use to apply toward the trust shortages. The Solicitor claimed that these fees outstanding in the trust account offset the trust shortages to which they were transferred. The Solicitor explained that instead of transferring the account receivable funds from his trust account to his general account, his bookkeeper made inter-trust transfers to the client ledgers with the trust shortages.

25. After further investigation, the Law Society auditor found that approximately \$1,838.98 of the total trust shortage of \$3,182.32 was offset by earned fees, leaving a trust shortage in the Solicitor's trust account of approximately \$1,343.34. (Tab 11, Document Book)

26. All of the trust shortages have been corrected by the Solicitor.

V. PRIOR DISCIPLINE

27. On March 1, 1988 the Solicitor was found guilty of professional misconduct for a breach of fiduciary duty. He received a Reprimand in Convocation on June 23, 1988. (Tab 12, Document Book)

DATED at Toronto this 14th day of February, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Allan Ian Wexler be suspended for a period of two and a half months and that he be ordered to pay costs to the Law Society in the amount of \$1,000.00.

REASONS FOR RECOMMENDATION

Practising While Suspended

1. The Solicitor moved in December 1992 and believes he sent an address change to the Law Society, but could not provide any record of that notice to the Law Society, and could not advise of the exact date he advised the Law Society of his change of address. The cheque sent for his Errors & Omissions Levy dated 29 April 1993, which was not honoured, showed his new address. The address in the Law Society computer was changed in July 1993. Clearly, the Solicitor has the responsibility to keep the Law Society informed of any change of address, and a cheque containing his new address does not qualify as the notice required.

2. The Solicitor sent a replacement cheque which was uncertified, and did not call the Law Society to confirm that he was reinstated to practice. Instead, he resumed practising. The Solicitor acknowledged he received a letter from the Law Society on 20 July 1993 telling him that the cheque to pay his fees had to be certified, and that he was not reinstated to practice until the certified cheque was received.

26th September, 1996

3. The Solicitor acknowledged that there was a period in June 1993 where he consciously didn't practise because he knew he was suspended. When the Solicitor learned he was suspended, he stayed home from work, but did not advise his clients that he could not practise.

4. The Solicitor did continue to practise while under suspension for a period of between 6 weeks to 8 weeks. The Solicitor's behaviour, while under suspension, particularly following the point in which he admitted he had actual notice of his suspension from a colleague, falls far short of what is required for a solicitor who is under suspension, in several different ways, including: confirming his status with the Law Society, notifying his clients, stopping his practice, and correcting his suspension by making payment. In this case, the suspension could have been corrected by making payment of the amount owed immediately, by courier or in person, and by certified cheque.

Not Maintaining Sufficient Funds in the Trust Account

5. Trust shortages arose at various times for various reasons in the Solicitor's trust account, but arose mainly in November 1992. The Solicitor gave an explanation regarding the trust deficiencies, which explanation was complicated and extremely difficult to follow. However, the essence of the Solicitor's explanation was that there were, in fact, no trust deficiencies. The Solicitor maintained that what looked like trust deficiencies for clients A, B and C were not really deficiencies, because there were excess funds from untransferred fees remaining in the trust account with respect to clients D, E and F. In other words, the Solicitor believed he could correct any shortages by making transfers directly from the trust account of client D into the trust account of client A, by transferring earned fees from client D to correct the deficiency in the account for client A. These transfers were made by the Solicitor as a trust account to trust account transfer, in effect, by a bookkeeping entry only, rather than by transferring the funds from his trust account to his general account, and then transferring the money back to the trust account of the other client.

6. It is the Solicitor's responsibility to correct any trust shortages. Sec. 14(12) of Regulation 708 under the Law Society Act requires solicitors to maintain sufficient balances on deposit in the trust account to meet all the solicitor's obligations with respect to moneys held in trust for clients. Partial compliance is not possible.

7. The Solicitor's position was that once fees were earned, they belonged to the Solicitor, and that improper bookkeeping did not amount to professional misconduct. Also, the Solicitor was of the view that if such direct transfers were permitted between trust ledgers for the same client, then they ought to be permitted between trust ledgers for different clients. The Law Society's position was that the onus was on the lawyer to show that the fee billings were done.

8. Transfers between trust accounts can occur, without breach of the Regulation, where money is transferred from one trust ledger to another trust ledger for the same client, without an actual withdrawal from and re-deposit to the trust account. Such a transfer would require at least the following events:

1. A bill is prepared for the fees
2. The knowledge of the client
3. The prior approval of the client
4. A trust statement accompanies the fee billing

26th September, 1996

9. Transferring trust money from the client ledger of one client to the client ledger of another client cannot be accomplished through bookkeeping entries only. Such transfers must be accomplished, if at all, by an actual transfer of funds out of the trust account to the lawyer's general account, and back to the trust account. This assumes, of course, that there were adequate funds in the first trust account to begin with.

10. The practice of the Solicitor making these transfers through bookkeeping entries only is not acceptable, and cannot be condoned.

11. The Solicitor's explanation regarding the trust shortages does not take the existence of those trust shortages out of the realm of professional misconduct. In fact, the Solicitor's explanation regarding the trust shortages demonstrates a fundamental failure to understand a solicitor's obligations with respect to a trust account, in accordance with the Regulations and Rules of the Law Society.

Penalty

12. The Solicitor practised while under suspension for a period of 6 to 8 weeks. In all the circumstances here, the period of suspension must be at least 6 to 8 weeks. The trust shortage, in particular, was a serious offence, and requires a penalty that reflects that. Also, the Solicitor has a discipline history for a rather serious matter (breach of a fiduciary duty in the improper handling of an estate), for which he was reprimanded in Convocation. Taking all those factors into account, the appropriate period of suspension is 2 1/2 months (10 weeks).

13. The Solicitor should also pay costs to the Law Society in the amount of \$1,000.

Allan Ian Wexler was called to the Bar on March 29, 1977.

ALL OF WHICH is respectfully submitted

DATED this 16th day of July, 1996

Carole Curtis, Chair

There were no submissions, the finding was confirmed and the Report adopted.

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

Both counsel made brief submissions in support of the recommended penalty.

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

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Adams, Angeles, Backhouse, Bobesich, Carey, Carpenter-Gunn, Crowe, Curtis, Eberts, MacKenzie, Marrocco, Millar, Murray, Puccini, Topp and Wilson.

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IN PUBLIC

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Re: Peter Edward HESLIN - Pickering

The Secretary placed the matter before Convocation.

Messrs. Cole and Swaye and Ms. Eberts withdrew for this matter.

Ms. Elizabeth Cowie appeared for the Society. Mr. Heslin appeared on his own behalf.

Convocation had before it the Report of the Discipline Committee dated 26th June, 1996 sworn 12th September, 1996 by David Munro Process Server that he had served the solicitor personally on 11th September, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 26th September, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Thomas E. Cole, Chair
Larry A. Banack
Gerald A. Swaye, Q.C.

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

Elizabeth Cowie
for the Society

PETER EDWARD HESLIN
of the City
of Pickering
a barrister and solicitor

Ian MacMillan
for the solicitor

Heard: March 26, 1996

26th September, 1996

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 11, 1995, Complaint D91/95 was issued against Peter Edward Heslin alleging that he was guilty of professional misconduct.

The matter was heard in public on March 26, 1996, before this Committee composed of Thomas E. Cole, Chair, Larry A. Banack, and Gerald A. Swaye, Q.C. The Solicitor attended the hearing represented by Ian MacMillan. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D91/95

2.
 - a) he misappropriated \$39,984.32, more or less, of client trust funds;
 - b) he misapplied \$9,596.90, more or less, of client trust funds by paying third parties from a mixed pool of trust funds to or on behalf of clients who had no funds or insufficient funds on deposit;
 - c) he failed to maintain the books, records and accounts of his practice on a current basis;
 - d) he failed to maintain the books, records and accounts of his practice on a current basis respecting a trust account at the Toronto Dominion Bank held in the name of Stephen Cooper & Associates. The Solicitor's failure to maintain the books and records respecting this account caused insufficient trust balances on deposit in the trust bank account in the sum of \$2,412.77;
 - e) he failed to comply with his undertakings to the Law Society dated May 27, 1993 and November 9, 1993 wherein the Solicitor undertook to deposit all future trust money into a trust account at the Canadian Imperial Bank of Commerce (account number 4501411) and the Royal Bank of Canada (account number 1183474). The Solicitor also violated the provisions of a co-signing agreement with the Law Society by opening a new trust account in the name of Stephen Cooper & Associates;
 - f) he misled the Law Society's examiner during its investigation of the Solicitor by providing the examiner with false explanations that the Solicitor later admitted were untrue;
 - g) he charged a hidden fee to his clients through a company he owned called Northern Courier and Para-Legal Services and failed to disclose to clients that the company received search and closing fees from clients for real estate transactions completed by the Solicitor on behalf of those clients; and

- h) he borrowed money from a client and failed to discharge his debt.

EVIDENCE

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D91/95 and is prepared to proceed with a hearing of this matter on January 30 and 31, 1996.

II. IN PUBLIC/IN CAMERA

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

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D91/95 and admits the particulars contained therein. The Solicitor further admits that the said particulars, supported by the facts hereinafter set out, constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 17, 1967, and at all times relevant to this matter, practised as a sole practitioner with offices in Bowmanville and Port Hope and a part-time office in Pickering.

Particular 2(a) Misappropriation - \$39,984.32 trust funds
Particular 2(b) Misapplication - \$9,596.90 trust funds
Particular 2(c) Failure to maintain books, records and accounts

5. On May 27, 1993, the Law Society commenced an investigation of the Solicitor's books and records. At that time, the Solicitor and his accountant advised that the books and records had been maintained on a sporadic basis since June 30, 1992. The Solicitor further advised that he maintained two trust accounts, the main account being at the Canadian Imperial Bank of Commerce in Bowmanville and the other at the Bank of Nova Scotia in Pickering. The Solicitor stated that the Pickering account was a transfer account and that all funds deposited to that account were transferred to the CIBC account. The most current trust comparison for the CIBC Bowmanville trust account was at December 31, 1992, which showed overdrawn trust ledger balances of approximately \$16,081.30. (Exhibit 1)

6. On May 27, 1993, co-signing controls were implemented on the CIBC Bowmanville trust account and a new account at the Royal Bank in Bowmanville was opened as trust account no. 2. As both the Solicitor and his accountant indicated there were no funds held in the Bank of Nova Scotia trust account in Pickering co-signing controls were not implemented on that account. The Society advised the Solicitor and his accountant that, under no circumstances, were the CIBC and Bank of Nova Scotia trust accounts to be used.

7. On July 15, 1993, the Society froze the Royal Bank trust account when it was discovered that, due to a printing error on the cheques, several general cheques had been negotiated through the trust account causing a shortfall in the trust account.

26th September, 1996

8. On July 15, 1993, the Bank of Nova Scotia trust account in Pickering was closed by the Solicitor with a bank balance of \$0.00, and outstanding trust obligations of \$9,309.23. (Exhibit 2)

9. An earlier trust account held at the Canadian Imperial Bank of Commerce in Port Hope had been closed by the Solicitor in October, 1992 with a bank balance of \$0.00 and outstanding trust obligations of \$4,005.44. (Exhibit 3) Further shortages were determined to exist in the trust account at the CIBC in Bowmanville and the trust account at the Royal Bank in Bowmanville. (Exhibit 4)

TRUST ACCOUNT - C.I.B.C. - BOWMANVILLE

BAIN/SYLVESTER

- Misappropriation - \$1,259.13
- Misapplication - \$674.00

10. In April, 1992, the Solicitor acted for all parties on the purchase by Bain\Sylvester from Neal\Dutka of a property municipally known as 142 Simcoe Street North, Oshawa.

11. This transaction was completed on April 6, 1992. The Solicitor represented both parties. The financial details of the transaction are as follows:

DATE	PARTICULARS	AMOUNT
Apr. 1/92	Receipt from Bain	\$ 3,209.87
Apr. 1/92	Receipt from Bain	\$ 1,061.35
Apr. 2/92	M.B Beer Conveyancer	(233.49)
Apr. 2/92	Treasurer of Ontario	(1,116.50)
Apr. 6/92	Peter Heslin	(107.10)
Apr. 6/92	Peter Heslin	(2,814.13)
Apr. 6/92	Account rendered= \$3,012.09	
Apr. 14/92	Neal/Dutka	(674.00)
	BALANCE IN TRUST	(674.00)

12. The total amount drawn from trust, \$4,271.22, resulted in overpayment to the Solicitor of \$1,259.13. A copy of the statement of account in the amount of \$3,012.09, dated April 6, 1992 is attached as Exhibit 5. Also reflected in the statement of account is a receipt of \$800.00 being applied against the Solicitor's fees and disbursements. There is no indication in the client's trust ledger card that this amount was received. It may have been deposited directly to the general account or to the Solicitor's personal account. The Solicitor then drew fees from trust thus duplicating the fee. A copy of the client's trust ledger is attached as Exhibit 6.

COTTER

- Misappropriation - \$1,949.00

13. This was a matrimonial matter which involved negotiations regarding custody and support.

14. On April 8, 1992, the Solicitor received \$1,200.00 in retainer and \$2,450.00 for child support, to be held in trust pending negotiations. The Solicitor prepared a separation agreement which he forwarded to the other party, Susan White.

15. On April 11, 1992, a disbursement of \$1,200.00 was made in favour of the Solicitor. An account was rendered on the same date but was later cancelled by the Solicitor because he was unable to provide the client with favourable results. A copy of this account is attached hereto as Exhibit 7.

16. On May 29, 1992, the Solicitor received an additional \$700.00 for child support, again this was to be retained in trust pending negotiations.

17. In June 1992, the Solicitor appropriated an additional \$749.00 which he inadvertently drew from the Port Hope trust account. There was no account rendered. The monies were on deposit in the Bowmanville trust account.

18. On July 1, 1992, the Solicitor transferred \$749.00 from the Bowmanville account into the Port Hope account to rectify the above error.

19. On July 2, 1992, the Solicitor forwarded an amended separation agreement to Susan White, indicating the previous draft was incorrect and did not reflect Mr. Cotter's mandate or directive. A copy of this letter is attached as Exhibit 8.

20. On July 6, 1992, Mr. Cotter wrote to the Solicitor regarding his instructions and the various flaws in the contents of the proposals sent to Susan White. The \$1,200.00 retainer was for successful completion and negotiations of the separation agreement. This was not attained on April 11, 1992 as reflected in Mr. Cotter's letter dated July 6, 1992 which is attached as Exhibit 9.

21. On July 27, 1992, Mr. Cotter terminated the Solicitor's services and demanded a letter of apology for the Solicitor's failure to follow his instructions. The client also demanded full refund of the retainer of \$1,200.00 and the support payment of \$3,150.00. A copy of this letter is attached as Exhibit 10.

22. On July 28, 1992, the Solicitor wrote to Susan White, again apologizing for inaccurate information reflected in the amended separation agreement provided to her on July 2, 1992. He assured Ms. White that the error was made in their office as a result of erroneous reference to wrong documents. A copy of this letter is attached as Exhibit 11.

23. On August 17, 1992, Mr. Cotter filed a formal complaint with the Law Society, a copy of which is attached as Exhibit 12.

24. On August 20, 1992, the Solicitor disbursed from the trust account \$4,350.00 in favour of Mr. Cotter reimbursement of the retainer and the child support payments. Of this amount, \$1,949.00 had been transferred previously to the general account.

25. The Solicitor misappropriated clients funds by making transfers from trust to the general account in excess of the fees to which he was supposed to be entitled. The \$1,200.00 which was designated for his fees was transferred into his general account prior to his successful completion of the services for which he was retained. In addition, he also misappropriated \$749.00 of the child support payment which he was specifically instructed to hold in his trust account pending successful negotiation with the other party. He then, when called upon to refund the fees, misapplied client trust funds in the amount of \$1,949.00 from the mixed trust account to repay Mr. Cotter.

26th September, 1996

MCCREIGHT

- Misappropriation - \$404.65

26. In February, 1993, the Solicitor acted for McCreight with respect to a mortgage transaction. The Solicitor rendered a statement of account indicating the fees and disbursements would be \$516.85. A copy of this statement of account is attached hereto as Exhibit 13.

27. The matter was completed on February 17, 1993 and the following transactions took place in the trust account:

DATE	CHEQUE #	PAYEE	AMOUNT
Feb. 16/93		Deposit	\$8,623.35
Feb. 16/93	5676	CMHC	(8,106.50)
Feb. 17/93	5673	P. Heslin	(300.00)
Apr. 6/93	5687	M & D Beer	(104.65)
Apr. 8/93	5697	P. Heslin	(516.85)
		BALANCE	(404.65)

28. A copy of the client trust ledger is attached hereto as Exhibit 14.

29. The disbursement to M & D Beer of \$104.65 was included in the statement of account for \$516.85. It is identified therein as "registration of mortgage" (\$27.00), "executions on closing" (\$22.00), and "agent to sub-search and close" (\$55.65). There is no correlation between the account and the \$300.00 transferred to the credit of the Solicitor, nor was another account rendered. The Solicitor therefore received \$404.65 to which he was not entitled.

MILLER

- Misappropriation - \$339.00
- Misapplication - \$27.00

30. This matter relates to the sale of 15 Carr Drive, Ajax.

31. On August 7, 1992, this transaction was completed. During the Society examination, the Solicitor was unable to locate the file and the manual ledger card that predates the accountant's records. Review of the accountant's computerized ledger card reveals that on this date, there was a disbursement to the Solicitor of \$339.00, when there were no funds available in the account.

32. On October 6, 1992, a cheque for \$27.00 was issued to Treasurer of Ontario for registration of discharge. Notes from the secretary reveal that she had previously accounted for and held-back funds for this expense, however, this hold back was no longer in the trust account.

33. A copy of the client's trust ledger account and secretary's note is attached as Exhibit 15.

26th September, 1996

PINKERTON

- Misappropriation - \$423.45

34. In February, 1993, the Solicitor acted for Pinkerton with respect to a mortgage transaction. He rendered a statement of account indicating his fees and disbursements totalled \$516.85. A copy of this statement of account is attached hereto as Exhibit 16.

35. The matter concluded on February 18, 1993, and the following disbursements were made from trust:

DATE	CHEQUE #	PAYEE	AMOUNT
Feb. 18/93	5672	P. Heslin	\$320.00
Apr. 6/93	5688	Treasurer of Ontario	27.00
Apr. 6/93	5689	M & D Beer	77.05
Apr. 8/93	5699	P. Heslin	516.25
		BALANCE	(423.45)

36. A copy of the client trust ledger is attached hereto as Exhibit 17.

37. Both the amounts paid to Treasurer of Ontario and M & D Beer were included in the account for \$516.85. The amount of \$320.00 transferred to the benefit of the Solicitor bears no relation to the account, nor was another account rendered. The Solicitor therefore received \$423.45 to which he was not entitled.

RALPH

- Misappropriation - \$585.34

38. In February, 1993, the Solicitor acted for Mr. & Mrs. Ralph on a mortgage transaction. He rendered an account stating his fees and disbursements totalled \$543.55. A copy of the account is attached hereto as Exhibit 18.

39. The matter concluded on February 15, 1993, and the following trust disbursements took place:

DATE	CHEQUE #	PAYEE	AMOUNT
Feb. 15/93	5658	P. Heslin	\$280.00
Feb. 15/93	5648	Treasurer of Ontario	27.00
Feb. 15/93	5647	Treasurer of Ontario	22.00
Feb/ 16/93	5671	M & D Beer	53.65

Apr. 5/93	5681	Treasurer of Ontario	27.00
Apr. 5/93	5682	Treasurer of Ontario	27.00
Apr. 8/93	5700	P. Heslin	692.54
		BALANCE	(585.34)

40. A copy of the client trust ledger is attached hereto as Exhibit 19.

41. All the disbursements to third parties listed above were included in the Solicitor's account for \$543.55. Neither of the amounts disbursed to himself (\$280.00 and \$692.54) bear any correlation to that account, nor was any other account ever rendered. The Solicitor therefore appropriated \$585.34 to which he was not entitled.

ROBINSON

- Misappropriation - \$52.88

42. In 1992, the Solicitor acted for the Robinsons on a real estate sale. The transaction closed on June 1, 1992.

43. The Solicitor rendered an account for fees and disbursements in the amount of \$354.95. A copy of this account is attached hereto as Exhibit 20.

44. The Solicitor also rendered a statement of trust receipts and disbursements, a copy of which is attached hereto as Exhibit 21. This document indicates, inter alia, that \$100.00 was being held back in trust to satisfy a Legal Aid obligation. It also seems to indicated that the Solicitor was entitled to a further fee of \$175.00.

45. The actual payment to Legal Aid was \$47.12, according to the client trust ledger, attached hereto as Exhibit 22.

46. On June 1, 1992, the Solicitor issued three cheque from trust to pay disbursements of \$98.15, thereby reducing the account receivable to \$256.80.

47. On the same day, he issued himself a cheque in the amount of \$403.55 and a further cheque for GST in the amount of \$28.25. Had he taken no further action with respect to his account and the trust account, the latter would have remained balanced. The total of the two cheques is \$431.80, which equals the amount owing from the account (\$256.80) and from the Legal Aid component (\$175.00). There would have remained \$52.88 in trust, the balance of the \$100.00 Legal Aid hold back.

48. However, from the manual client ledger it appears the payment of \$403.55 was deleted. The unexpended trust balance was not revised accordingly, nor was the accompanying \$28.25 for GST likewise deleted.

49. Further investigation revealed that the cheque for \$403.55 was altered to \$456.43, and negotiated by the Solicitor, resulting in an overpayment to him of \$52.88.

26th September, 1996

SMITH, BEVERLEY

- Misappropriation - \$364.85

50. This file relates to a matrimonial matter. The Solicitor, during the Society examination, was unable to locate the client's trust ledger card which pre-dates the accountant's computer generated card.

51. In May 1992, the Solicitor was retained by the client at which time he received a retainer of \$1,000.00, which was deposited into trust.

52. Thereafter, the following transactions took place:

DATE	DESCRIPTIONS	AMOUNT	EXHIBIT
May 1992	Retainer	\$ 1,000.00	
May 13th 1992	Account rendered -\$486.85		#23
May 13th 1992	Trust transfer to general	(486.85)	
Jun.30th 1992	Unidentified balance forward	85.15	
July 28th 1992	Account rendered- \$481.50		#24
July 28th 1992	Trust transfer to general	(481.50)	
Aug. 24th 1992	Account rendered- \$481.50		#25
Aug. 24th 1992	Trust transfer	(450.00)	
	Total Amount of Shortage in Trust	(364.85)	

53. Since the accounting records were not properly maintained in the later part of 1992, the accountant was unable to determine the actual source of \$85.15 increase in the trust balance as at June 30, 1992. A copy of the client trust ledger is attached hereto as Exhibit 26.

SHELL

- Misappropriation - \$150.00

54. During 1992, the Solicitor acted for Schell. There were no trust funds deposited to the credit of the client. Despite that, on September 8, 1992, the Solicitor transferred \$150.00 from the trust account to his benefit, resulting in a shortage of \$150.00. This transfer was not supported by any fee billing or disbursement. A copy of the client trust ledger and the negotiated cheque are attached hereto as Exhibit 27.

WALKER

- Misappropriation - \$1,865.67

55. During 1991 and 1992, the Solicitor acted for Walker. The client file was not available for inspection by the Society as the entire contents had been forwarded to another solicitor. However, the manual client trust ledger card indicates that no funds were ever deposited in trust to the credit of the client. A copy of that ledger card is attached hereto as Exhibit 28.

56. On February 13, 1992, the Solicitor rendered an account for \$1,197.33, inclusive of GST and disbursements.

57. On April 7, 1992, payment was received in the amount of \$1,100.00. On May 27, 1992, another payment was received of \$1,000.00. Both these amounts were deposited to the general account and credited against the account rendered, resulting in a credit in the general account of \$902.61.

58. On June 2, 1992, a transfer was made from the trust account of \$963.00 to the credit of the Solicitor, despite there being no funds held in trust. This resulted in a trust shortage of \$963.00 and increased the overpayment to the Solicitor to \$1,865.67.

59. Neither the credit in the general account nor the trust transfer is supported by any fee billing or account.

BROWN

- Misapplication - \$465.70

60. This matter relates to the refinancing of 957 Pickering Beach Road Ajax.

61. On February 3, 1993, the mortgagee, Amyotte, provided the Solicitor with a discharge statement. A copy of this statement is attached as Exhibit 29. From the proceeds of the new mortgage with Royal Bank, the current mortgage had to be paid-out.

62. The financial details of the transaction are as follows:

DATE	PARTICULARS	AMOUNT
Feb. 15/93	Royal Bank-mortgage advance	\$36,000.00
Feb. 15/93	Peter Heslin	(325.00)
Feb. 16/93	From client	11,943.67
Feb. 16/93	Treasurer of Ontario	(54.00)
Feb. 16/93	M. D. Beer	(66.70)
Feb. 16/93	Holly Ewelles	(20.00)
Feb. 16/93	John W Corkery in trust	(47,943.67)
	BALANCE	(465.70)

63. On March 4, 1993, the Solicitor wrote to the solicitor for the mortgagee, John Williams Corkery, advising him that the discharge amount provided by their office on February 16, 1993 was overstated by \$612.92. A copy of this letter is attached as Exhibit 30.

64. On March 8, 1993, Mr. Corkery drew the Solicitor's attention to the pre-payment condition of the mortgage and provided him with an amended statement. A copy of this letter is attached as Exhibit 31.

65. This dispute has not been settled and the Solicitor states that he is still waiting for the other party to make settlement. A copy of the client's trust ledger is attached as Exhibit 32.

BRUMM

- Misapplication - \$11.00

66. This matter relates to purchase and sale of real estate properties.

67. On February 26, 1993, this transaction was completed, at which time the Solicitor issued trust statements and statement of accounts for both transactions. Fees and disbursements were paid according to the statements and the funds in trust were exhausted. A copy of the statement of account is attached as Exhibit 33.

68. On March 18, 1993, another payment was made to PDH Office Support for an additional disbursement which was not accounted for in the previous statement of accounts. This payment caused the account to be overdrawn. A copy of the client's trust ledger is attached as Exhibit 34.

BURGESS

- Misapplication - \$37.77

69. This matter relates to a mortgage with CIBC.

70. This transaction was completed on November 6, 1992. The manual ledger card reveals that, on November 6, 1992, cheque # 4888 for \$38,302.47 was issued to Central Guaranty Trust. This amount was according to the Statement of Account attached hereto as Exhibit 35. This cheque was never cashed.

71. On November 20, 1992, another cheque was re-issued for \$38,340.24. The difference between the two amounts was \$37.77. It appears that there was a mis-communication with the amount required to discharge the mortgage with Central Guaranty Trust. The difference was not accounted for and therefore the amount received in trust was based on the former figure.

72. A copy of the client's trust ledger is attached as Exhibit 36.

CAVERLY

- Misapplication - \$17.78

73. This matter relates to purchase of a real estate property.

74. On October 23, 1992, this transaction was completed. The amount of mortgage funds advanced by the mortgagee, C.I.B.C., was \$101,639.98. The amount recorded in the trust ledger was \$101,657.76 which became the basis of the Solicitor's calculation for funds required on closing. When all the disbursements were completed, the account was overdrawn by the difference between the actual mortgage proceeds and the amount recorded as received.

26th September, 1996

75. Copies of the client's trust ledger account and the statement of account are attached as Exhibits 37 and 38.

CROFT

- Misapplication - \$53.50

76. This matter relates to purchase of real estate property.

77. On November 26, 1992, a trust cheque for \$53.50 was issued to Fuller and Spicer for an estoppel certificate. The manual ledger card did not disclose this payment.

78. On November 27, 1993, the transaction was completed and all the funds were exhausted.

79. A comparison of the manual ledger against that of the accountant's computerized ledger revealed that the payment of \$53.50 was never accounted for on November 27, 1993. Copies of the client's trust ledger accounts (manual and computerized) are attached as Exhibit 39.

EWLES

- Misapplication - \$180.00

80. This transaction relates to mortgage financing.

81. On June 5, 1992, this transaction was completed. The amount of the mortgage funds advanced by the Bank of Nova Scotia was \$18,029.33. This was recorded as \$18,209.33. The transposition error resulted in an overdraft of \$180.00.

82. Copies of the client's trust ledger, statement from the bank and statement of account are attached as Exhibit 40.

HALL

- Misapplication - \$18.00

83. This matter relates to real estate purchase of 315 Verdun Rd. Oshawa.

84. On January 26, 1993, this transaction was completed at which time the Solicitor received \$6,046.47 from the client. This was recorded in the manual client's trust ledger account as \$6,064.47, the difference being \$18.00. This error was not corrected until June 1993.

85. A copy of the client's trust ledger account is attached as Exhibit 41.

LARMER

- Misapplication - \$9.00

86. This matter relates to financing of 66 Scugog St. Bowmanville

87. On June 30, 1992, this transaction was completed, at which time the Solicitor rendered a statement of account. The statement revealed that there was a hold-back of \$22.00 for courier. A copy of this statement of account is attached as Exhibit 42.

88. On July 6, 1992, a cheque for \$9.00 was issued to Express Delivery.

89. On September 8, 1992, a cheque for \$3.93 was issued to Business to Business.

90. On September 9, 1992, a cheque for \$15.00 was issued to KDS Delivery and another one to Purolator Courier for \$3.07.

26th September, 1996

91. The total of the above disbursements was \$31.00. The hold-back of \$22.00 was insufficient to satisfy the liability incurred for this account. Copies of the manual and the computerized trust ledger is attached as Exhibit 43.

MCGILL

- Misapplication - \$71.00

92. This matter relates to the purchase of R R 2, Port Hope. This transaction was scheduled to close on September 24, 1992.

93. On June 23, 1992, a transaction relating to another purchase of property for this client was completed. There was a hold-back of \$51.00 allocated for courier.

94. On July 16, 1992, the following courier bills were paid:

Cheque # 3997	Express Delivery	\$9.00
Cheque # 3998	Express Delivery	9.00
Cheque # 3928	Express Delivery	4.00

The balance remaining in trust as at July 31, 1992 was \$29.00

95. On September 23, 1992, funds in the amount of \$34,936.87 was received, and deposited into trust.

96. On September 24th 1992, the following disbursements were made:

Cheque # 4533	Peter Heslin	\$ 37.10
Cheque # 4534	Peter Heslin	52.00
Cheque # 4535	Treasurer of Ontario	102.00
Cheque # 4536	PDH Office Support	138.90
Cheque # 4537	Wilfred Day in Trust	34,522.87
Cheque # 4538	Sheriff	44.00

97. Cheque # 4535 to Treasurer of Ontario which was originally issued for \$102.00, was altered to \$202.00, after it had been written. This change was never accounted for until the accountant reconstructed the records in mid-1993. A copy of the negotiated cheque is attached as Exhibit 44. This caused an overdraft of \$31.00.

98. On October 8, 1992, a cheque for \$40.00 to Express Delivery was issued, causing the overdraft to increase to \$71.00.

99. A copy of the manual ledger cards and the computerized ledger card are attached as Exhibit 45.

PETERSEN-STALLARD

- Misapplication - \$91.45

100. This matter relates to mortgage financing of a property known as R R #2, Port Hope, Ontario.

101. On September 30, 1992, the following cheques were issued out of the trust account:

DATE	PAYEE NAME	AMOUNT	BALANCE
	Balance in Trust		-0-
Sep.30/9 2	Treasurer of Ontario	\$ 32.00	
Sep.30/9 2	Treasurer of Ontario	22.00	
Sep.30/9 2	PDH Office	37.45	\$(91.45)

102. There was another transaction for this client related to another property namely 850 Burham St. Cobourg. Review of the client ledger revealed that the above mentioned cheques were also posted to this account. It appears that these cheques were posted twice.

103. Copies of the client's trust ledgers are attached as Exhibit 46.

SWIFT

- Misapplication - \$3,435.97

104. This matter relates to a real estate purchase transaction.

105. On April 30, 1993, this transaction was completed. The calculation in the trust statement for the funds required to complete the transaction was understated by \$3,600.00. When all the funds were paid out the account was overdrawn by the above-mentioned amount. The client has since repaid the Solicitor.

106. Copies of the statement of adjustment and the client's trust ledger account are attached as Exhibit 47.

HESLIN SUSPENSE ACCOUNTS

107. William Scoffield, the accountant retained by the Solicitor in February to reconstruct his records encountered numerous trust disbursements which he was unable to allocate to any particular clients. He then decided to establish a Suspense trust account to accumulate and keep track of these transactions. A copy of the HESLIN SUSPENSE TRUST ACCOUNT #1 is attached as Exhibit 48.

HESLIN SUSPENSE TRUST ACCOUNT # 1

- Amount of Shortage - \$3,582.75

108. The following schedules segregate the transactions by category:

MISAPPROPRIATION IN SUSPENSE

DATE	CHQ #	PARTICULARS	AMOUNT	EXHIBIT
Sept. 25/92	4560	Peter Heslin	\$ 2,125.00	49
Oct. 9/92	N/A	Peter Heslin	1,200.00	50
Oct. 9/92	N/A	Peter Heslin	2,475.64	51
Nov. 9/92	4922	Peter Heslin	525.00	52
Nov. 16/92	4930	Peter Heslin	700.00	53
Jan. 29/93	5587	Peter Heslin	975.00	54
Feb. 26/93	5760	Peter Heslin	750.00	55
Mar. 8/93	5810	Peter Heslin	682.40	56
Mar. 26/93	5903	Peter Heslin GST	605.29	57
		TOTAL AMOUNT OF MISAPPROPRIATION	\$10,038.33	

UNCORRECTED BANK CHARGES IN SUSPENSE # 1

DATE	DESCRIPTION	AMOUNT
Oct. 31/92	Service charges	\$ 19.00
Oct. 31/92	Service charges	12.14
Nov. 30/92	Service charges	19.00
Dec. 31/92	Service charges	5.36
Jan. 29/93	Service charges	21.60
Mar. 31/93	Service charges	15.69
Apr. 30/93	Service charges	194.88
May 31 /93	Service charges	6.10
	TOTAL CHARGES	\$293.77

VARIOUS UNIDENTIFIED CHARGES IN SUSPENSE #1

DATE	REF. #	DESCRIPTIONS	AMOUNT
Jul. 31/92	ADJ	Adj. to deposit-misc.	\$ 0.03
Jan 15/93		Debit on statement-unidentified	332.60
Jan 28/93	5537	Treasurer Ont.-Peloski	22.00
Jun. 01/93	TJE8	Reallocate 5727	155.20
Jun. 01/93	TJE9	Reallocate 5696	417.90
Jun. 01/93	TJE10	Adjustment to deposit	463.40
Jun. 01/93	TJE11	Adjustment chq# 6014	0.83
Jun. 01/93	TJE14	Transfer chq. #5926	132.00
		TOTAL ADJUSTMENTS	\$1,523.96

The accountant has not been able to determine an explanation for these charges to date. DEPOSITS AND OTHER ADJUSTMENTS IN SUSPENSE #1-TRUST

DATE	DESCRIPTIONS	AMOUNT
Sep. 01/92	Deposit-Peter Fees	\$ 182.92
Jan. 14/93	Deposit-unknown	328.10
Jan. 15/93	Courier - Adj.	19.40
Jan. 28/93	Redeposit Dahmer	31.85
Feb. 01/93	Heasley-fees not taken	370.85
Feb. 05/93	Deposit - Peter	1,000.00
Apr. 21/93	Transfer from Bank of Nova Scotia trust account - unallocated	3,300.00
May 06/93	Carvana Sheriff	22.00
May 26/93	Replace cheque # 6092 & 6095	839.53
Jun. 01/93	Colley fees left in	370.85
Jun 01/93	Colombo fees left in	375.00
Jun 01/93	Court fees left in	69.25
Jun 01/93	Fejer fees left in	375.00

DATE	DESCRIPTIONS	AMOUNT
Jun 01/93	Fees Newman	370.85
Jun 01/93	Execution not taken	98.45
Jun 01/93	Courier not taken	200.00
Jun 01/93	Sheriff certificate	121.00
Jun 01/93	GST transfers	47.60
Jun 01/93	Various alloc. TJE18	150.66
	TOTAL DEPOSITS	\$ 8,273.31

HESLIN SUSPENSE # 2

- Trust Shortage - \$444.77

109. This account was used to post unallocated courier charges and GST payments made from the trust account. A copy of the trust ledger journal is attached as Exhibit 58, and indicates a trust shortage of \$444.77.

HESLIN SUSPENSE # 3

- Trust Shortage - \$15.64

110. This account was also used to post unallocated courier charges and GST payments made from the trust account. A copy of the trust ledger journal is attached as Exhibit 59, and indicates a trust shortage of \$15.64.

HESLIN SUSPENSE # 4

- Trust Shortage - \$1,711.57

111. This account showed an outstanding deposit of \$1,711.57. This amount does not represent an actual deposit but was used to force a trust balance reconciliation.

MISCELLANEOUS OVERDRAFTS - \$2.23

112. The following accounts were overdrawn as a result of bookkeeping errors:

Jukes	Amount of shortage	\$.12
Luckerman	Amount of shortage	\$1.41
McVear	Amount of shortage	\$.01
Trieu	Amount of shortage	\$.24
Wannamaker	Amount of shortage	\$.45

TRUST ACCOUNT - BANK OF NOVA SCOTIA - PICKERING

113. On May 27, 1993, the Solicitor stated to the Society that the trust account at the Bank of Nova Scotia in Pickering was merely a clearing account for the convenience of the Pickering branch office and that all funds deposited therein were transferred to the main trust account at the C.I.B.C. in Bowmanville. As a result of these representations, the Society did not place co-signing controls on the Bank of Nova Scotia account, but gave the Solicitor instructions that the account was to be treated as frozen and not used under any circumstances.

114. Later that same day the Solicitor transferred funds for two clients, Johnston and Coreal, from the Bank of Nova Scotia trust account to the new trust account at the Royal Bank. These transfers were in the amounts of \$5,470.64 and \$9,276.78. The client trust ledgers and negotiated cheques are attached hereto as Exhibits 60 and 61.

115. As of June 30, 1993, the Bank of Nova Scotia trust account had a posted shortage of \$9,117.80, as indicated by the trust ledger attached hereto as Exhibit 62.

116. The shortage was caused by a number of unallocated disbursements made from the account in favour of the Solicitor. These disbursements were neither supported by any fee billings nor allocated to any client. The disbursements were as follows:

DATE OF CHEQUE	CHEQUE #	PAYEE	AMOUNT	EXHIBIT
April 11/93	189	Heslin in trust - deposited to CIBC	\$ 1,600.00	63
April 12/93	190	Heslin in trust - deposited to CIBC	700.00	63
April 13/93	191	Heslin	1,800.00	63
April 16/93	375	P. Heslin	500.00	64
April 16/93	376	P. Heslin	1,200.00	64
April 20/93	377	P. Heslin	750.00	64
April 20/93	378	P. Heslin	750.00	64
April 23/93	379	P. Heslin in trust - deposited to CIBC	1,000.00	65
April 23/93	380	P. Heslin	1,500.00	65
April 23/93	381	P. Heslin	1,125.00	65
		TOTAL	\$10,925.0 0	

117. The Solicitor attempted to reduce the shortage by leaving fees earned in the Bank of Nova Scotia trust account in the amount of \$1,807.20.

118. On July 14, 1993, the Society was made aware of the shortages in the Bank of Nova Scotia trust account. That same day the Solicitor closed this account and took the balance of \$191.43 in a bank draft, attached hereto as Exhibit 66, leaving an actual shortage of \$9,309.23.

26th September, 1996

119. The Solicitor further states that the transfers to himself were on account of fees and disbursements. He admits that, because no current records were maintained or fee billings rendered, he was simply estimating the monies available and earned.

TRUST ACCOUNT - CANADIAN IMPERIAL BANK OF COMMERCE - PORT HOPE

TAPP

- Misapplication - \$5.16

120. In July, 1991, the Solicitor acted for Mrs. Margaret Tapp on a sale of real estate. The transaction closed on July 26, 1991 and on that date the Solicitor rendered an account in the amount of \$719.20, attached hereto as Exhibit 67. One disbursement on the account was for \$45.00 for an agent to close and register; another was for \$25.00 to register a statement of death.

121. As of July 26, 1991, the Solicitor held funds in trust to the credit of Mrs. Tapp in the amount of \$91,778.00. These funds were disbursed as follows:

DATE	CHEQUE #	PAYEE	AMOUNT
July 26/91	28	Peter Heslin (fees)	\$ 560.00
July 26/91	29	Peter Heslin (GST)	39.20
July 26/91	32	PDH Office Support	48.15
July 26/91	37	Treasurer of Ontario	50.00
July 26/91	38	Margaret Tapp	70,657.79
July 26/91	40	144630 Ontario	12,555.02
July 26/91	41	Remax National Realty	7,846.00
Aug. 25/92	0823	Treasurer of Ontario	27.00
		TOTAL DISBURSED	91,783.16
		DIFFERENCE	(5.16)

122. Copies of the client trust ledger are attached hereto as Exhibit 68.

26th September, 1996

BADGLEY

- Misappropriation - \$532.90

123. In 1992, the Solicitor acted for T. Badgley on a real estate purchase. The Solicitor rendered a statement of account indicating that funds were required from the client in the amount of \$36,713.31, and stating that the fees and disbursements totalled \$1,687.30. This included the Solicitor's fee of \$500.00 (exclusive of GST). A copy of the statement of account is attached hereto as Exhibit 69.

124. The client forwarded funds in the amount of \$37,213.31, \$500.00 in excess of the amount requested, to the Solicitor. These funds were placed in trust and disbursed as follows:

DATE	CHEQUE #	PAYEE	AMOUNT
Sept. 1/92	0831	Toronto Municipal C.U.	662.10
Sept. 1/92	0832	Joan Ann - credit purchasers	25,041.10
Sept. 1/92	0833	Gordon C. Kelly - credit purchasers	9,322.81
Sub total - disbursed to credit of purchasers			35,026.01
Balance remaining			2,187.30
Sept. 1/92	0834	Treasurer of Ontario disbursement	122.00
Sept. 1/92	0835	Treasurer of Ontario disbursement	5.00
Sept. 1/92	0836	PDH disbursement	75.20
Sept. 1/92	0837	Peter Heslin fees	549.00
Sept. 1/92	0838	Treasurer of Ontario disbursement	919.00
Sub-total - fees and disbursements			1,670.20
[Difference from statement of account]			17.10
Balance remaining			517.10
Sept. 8/92	0839	Peter Heslin fees	550.00
BALANCE			(32.90)

26th September, 1996

125. A copy of the client ledger card is attached hereto as Exhibit 70. No fee billing was rendered to support the transfer of \$550.00 to the Solicitor on September 8, 1992, and the excess funds paid by the client were not returned to him.

TUMA

- Misappropriation - \$1,050.70

126. In September, 1992, the Solicitor acted for Mr. and Ms. Tuma on the purchase of real estate. He prepared a statement of account indicating he required funds in the amount of \$58,083.78 to complete the transaction and fixing his fees and disbursements at \$1,046.70. A copy of the statement of account is attached hereto as Exhibit 71.

127. The clients forwarded funds in the requested amount and these funds were deposited to the trust account at the CIBC in Port Hope. From thence the funds were immediately transferred to the main trust account at the CIBC in Bowmanville. However, four cheques were written on the trust account in Port Hope, as follows:

DATE	CHEQUE #	PAYEE	AMOUNT
Sept. 19/92	0841	PDH Office	149.20
Sept. 19/92	0842	Treasurer of Ontario	376.00
Sept. 19/92	0843	Peter Heslin	31.50
Sept. 19/92	0844	Peter Heslin	494.00
		TOTAL	1,050.70

128. Of these cheques, it appears only cheque 0844 (to the Solicitor in the amount of \$494.00) was negotiated. The other three remain outstanding.

129. On September 21, 1992, the transaction was completed and the amount of \$1,046.70 disbursed from the CIBC trust account in Bowmanville for the Solicitor's fees and disbursements in accordance with the statement of account, thereby completing the double-billing. A copy of the client trust ledger is attached hereto as Exhibit 72.

McCARTNEY

- Misapplication - \$1,619.77

130. The Solicitor has acted for McCartney on a number of matters, including real estate and matrimonial, for a period of years. A number of manual client trust ledger cards have been created, which do not clearly delineate the transactions and which cannot be completely reconciled to the available statements of account. A copy of the manual trust ledgers is attached hereto as Exhibit 73 and a copy of the statements of account as Exhibit 74.

26th September, 1996

131. A consolidation of the funds in trust at the CIBC in Port Hope for McCartney shows a balance of \$3,794.59 as at June 30, 1992. On September 8, 1992, a disbursement of \$440.00 was made in favour of the Solicitor and on September 28, 1992 one in the amount of \$7,450.00 was made to a third party. The client deposited further funds of \$2,475.64 on October 9, 1992, leaving a net trust shortage of \$1,619.77. A copy of the client trust ledger is attached hereto as Exhibit 75.

132. Due to the Solicitor's incomplete records, it cannot be determined whether the shortage is due to an overpayment to the Solicitor or some other cause.

HOGG

- Misapplication - \$794.91

133. In 1992, the Solicitor acted for Hogg. The Solicitor was unable to produce his client file for inspection by the Society. The manual client trust ledger indicates that the sum of \$37,937.61 was disbursed to Hogg from trust when the trust balance was only \$37,142.70, resulting in a trust shortage of \$794.91. A copy of the manual client trust ledger is attached hereto as Exhibit 76.

TRUST ACCOUNT - ROYAL BANK - BOWMANVILLE

134. On May 27, 1993, a trust account was opened at the Royal Bank in Bowmanville and co-signing controls instituted. A copy of the co-signing agreement is attached hereto as Exhibit 77.

135. By June 30, 1993, there was a shortage in this account of \$9,750.14. This shortage was caused by the bank incorrectly micro-encoding the trust account number on the Solicitor's general account cheques, and then processing these cheques (without the required co-signatory) through the trust account. Copies of the cheques are attached hereto as Exhibit 78.

136. The Solicitor became aware of the error, but continued to use the cheques, crossing out the incorrect account number.

137. When the Royal Bank was made aware of the difficulty, the manager refused to re-negotiate the cheques through the Solicitor's general account, as there were insufficient funds in that account and would have been insufficient funds even had his \$5,000.00 line of credit not been revoked.

138. The Solicitor states that since his last filing of June 30, 1992, he has had difficulties maintaining competent bookkeepers. He says that he employed a bookkeeper in Port Hope from June 1992 to September 1992 but she did not work out. He again employed another bookkeeper, Ms. Weatherspoon, from September 1992 to November 1993, but she also failed to meet his expectations.

139. In or about February 1993, the Solicitor states that he finally employed an accountant, Mr. William Scoffield, to reconstruct his records. This employment was a number of months prior to the Society audit. He indicates that he lost total control of his books and records and simply relied on his memory and on whatever information he could find in the file when taking his fees and disbursements. He admits that his system was not very effective because sometimes the procedure is duplicated by his secretary. He states that sometimes he issues cheques on account of his fees without knowing

26th September, 1996

whether or not his secretary had already made the transfers. This results in some double charging of fees and the trust accounts being overdrawn. He also advises that there was no system in place to track down and allocate outstanding incurred expenses and disbursements, paid from the general account.

Particular 2(d) Failure to maintain proper books, records and accounts

140. On September 14, 1994, co-signing controls were instituted against the trust account designated in the name of Stephen Cooper and Associates in trust for Peter Heslin (Toronto-Dominion account #0395-0922003) for reasons noted later.

141. The Toronto Dominion trust account #0395-0922003 was originally opened on June 15, 1994. For the period beginning June 15, 1994 to September 14, 1994 deficient record keeping led to numerous errors as set out in the Charts at Appendix "A".

141. The trust bank reconciliation for the month ended September 30, 1994, attached hereto as Exhibit 79, indicates the Solicitor failed to maintain sufficient trust balances in the sum of \$2,412.77.

143. Using the trust reconciliations, the Solicitor's trust shortage was calculated to be \$2,412.77 as follows:

Date	Matter/Client	Amount
June 24, 1994	Client 85 - Blight	\$425.00
July 8, 1994	Client 298941 - Chathcart	\$345.58
July 28, 1994	Client 109941 - Pepper	\$221.32
July 28, 1994	Client 195941 - Chand	\$500.00
August 9, 1994	Client 212941 - Cote	\$500.00
August 12, 1994	Client 206941 - Davidson	\$188.73
July 1994	Client 305 - Dwyer	\$31.55
June 14, 1994	service charge	\$17.00
June 28, 1994	service charge	\$8.50
July 13, 1994	certified cheque charge	\$4.25
July 15, 1994	certified cheque charge	\$8.50
July 29, 1994	stop payment charge	\$25.50
August 2, 1994	certified cheque charge	\$17.00
June 24, 1994	bank error - deposit added incorrectly	(.60)
June 28, 1994	cheque #666 cashed wrong amount	.50
August 19, 1994	cheque #1348 certified wrong amount	(.06)

Date	Matter/Client	Amount
August 29, 1994	Client 198941 - Mahoney	\$50.00 \$20.00
August 31, 1994	Client 348941 - Black /Simpson	\$50.00
	TRUST SHORTAGE:	\$2412.77

144. On October 17, 1994, the Solicitor corrected the shortage by injecting his own funds including funds borrowed from Stephen Cooper totalling the sum of \$2,412.77, as indicated by the series of cheques attached hereto as Exhibit 80.

145. On October 17, 1994, entries were made to correct the overdrawn client trust ledgers, as indicated in Exhibit 81.

Particular 2(e) Failure to comply with Undertaking

146. On May 27, 1993, the Solicitor gave an Undertaking to the Law Society to deposit all future trust money coming into his possession or control into a new trust account designated as Trust account #2 at the Royal Bank of Canada in Bowmanville (account #1183474). A copy of this Undertaking is attached hereto as Exhibit 82.

147. The Royal Bank of Canada trust account #2 became overdrawn and had to be frozen by the Law Society. Another trust account designated as trust account #2 was set up with the Toronto Dominion Bank in Bowmanville. The bank manager required all the Solicitor's deposits to the account to be certified. Due to these circumstances and to accommodate the Solicitor, the Law Society agreed to close the Toronto Dominion account in Bowmanville and set up another operating trust account, with co-signing, with the Canadian Imperial Bank of Commerce in Bowmanville.

148. On November 9, 1993, another trust account was set up with the Canadian Imperial Bank of Commerce account #45-01411 with co-signing controls as indicated by Exhibit 83. The Solicitor signed a second Undertaking to the Law Society dated November 9, 1993, attached hereto as Exhibit 84, to deposit all trust money coming into his possession or control forthwith into the Canadian Imperial Bank of Commerce trust account #45-01411. The co-signer was William Scoffield, the Solicitor's accountant.

149. On June 15, 1994, Stephen Cooper opened a trust account with the Toronto Dominion Bank in Pickering designated in the name of Stephen Cooper & Associates in trust. Mr. Cooper advises that he opened this trust account in trust for the Solicitor.

150. The co-signing agreement dated November 9, 1993 allowed the Solicitor to continue to operate a law practice while having a second party attend to the signing of the Solicitor's trust cheques. The co-signers were William Scoffield, Chartered Accountant and Law Society representative, Theda Lean. No charges were to be made against the Solicitor's trust account without the express written consent of the Law Society of Upper Canada. These instructions could not be altered or revoked without the express written consent of the Law Society.

151. The trust account was set up with these co-signing procedures in order that the Law Society could monitor the Solicitor's trust accounting transactions. By opening another separate trust account with the Toronto Dominion Bank in Pickering under a completely separate name (Stephen Cooper & Associates In Trust), the Solicitor violated the provision of the co-signing agreement.

152. The Solicitor advises that his previous co-signer William Scoffield (Chartered Accountant) resigned sometime in July of 1994. Mr. Scoffield could no longer co-sign on the Solicitor's operating trust account at the Canadian Imperial Bank of Commerce.

153. The Solicitor advises that the account was opened to fill in a temporary period when he was replacing co-signers.

154. The Solicitor advises that since Stephen Cooper was willing to co-sign for him, the Solicitor felt it would be acceptable to operate another trust account under the name of Stephen Cooper & Associates as long as the trust account was not under Peter Heslin's name in trust.

155. The Solicitor advises that he did not feel it was necessary to contact the Law Society to advise them of the change of trust accounts.

156. The Solicitor thought it was all right to operate a trust account under another name as long as he did not have personal control of the trust funds on hand in the trust account. So long as Mr. Cooper was co-signing trust cheques for him, he thought that would be sufficient for the Law Society.

Particular 2(f) Solicitor misled the Law Society's representative

157. Law Society Examiner, Theda Lean wrote to the Solicitor on August 22, 1994 in regard to her meeting with him on July 5, 1994, and subsequent discussion with Stephen Cooper. A copy of this letter is attached hereto as Exhibit 85. In Ms. Lean's letter, she states that the Solicitor advised the Law Society that Mr. Scoffield's services had been terminated. Therefore, Mr. Scoffield could no longer co-sign on the operating trust account at the Canadian Imperial Bank of Commerce. The Solicitor also indicated to the Law Society that Stephen Cooper was willing to co-sign on the operating Canadian Imperial Bank of Commerce account.

158. The Solicitor explained that he had not even been using the trust account and any files related to real estate matters were being transferred to Stephen Cooper. The Solicitor advised Theda Lean that he continued to handle other matters such as family law and civil litigation matters which were the main source of his revenue. The Solicitor informed Ms. Lean that he no longer handled any real estate matters.

159. Theda Lean advised the Solicitor in her letter of August 22, 1994 that on August 4, 1994, Stephen Cooper revealed to her he had opened a trust account in the name of Stephen Cooper & Associates in trust for Peter Heslin. Mr. Cooper confirmed to Ms. Lean that this account was being used to facilitate trust transactions related to the Solicitor's real estate files. Mr. Cooper confirmed that he had sole signing authority on the account and had agreed to become a co-signer for this trust account because the Solicitor informed him that the Law Society had agreed to the situation.

160. Mr. Cooper was under the impression that setting up the trust account for the Solicitor, controlled solely by Stephen Cooper, satisfied any requirement the Law Society had regarding co-signing procedures. Mr. Cooper stated that the Solicitor advised him that he obtained approval from the Law Society to do this. The Solicitor had not obtained any such approval.

Particular 2(g) Breach of Rule 9 - Undisclosed Fee

161. The Solicitor is the Sole Proprietor of a company named Northern Courier and Para-Legal Services. The business name was registered at the Ministry of Consumer and Commercial Relations on January 5, 1994, as indicated by Exhibit 86.

162. The Solicitor did not disclose to his clients that he owns the company known as Northern Courier and Para-Legal Services. Through this company, the Solicitor charged his clients an extra fee to search and close real estate transactions on top of his legal fee which is normally a flat rate of \$455.00. The extra fee was approximately \$150.00 plus \$31.03 for courier charges.

163. The Solicitor retains the services of M & D Beer (Dorothy Beer) a freelance conveyancer to attend to most of his real estate searches and closings. The client is still responsible for paying any search disbursement charges which are usually deducted from the client's trust funds. Out of the fee paid to Northern Courier and Para-Legal Services, the Solicitor pays M & D Beer's agency fee to search and close the real estate transaction. The approximate agency fee charged by M & D Beer to search a real estate transaction is \$50.00 for Land Titles and the amount varies for a Registry search. To close/register a real estate transaction, the fee is usually \$45.00 for the Solicitor because of the volume of real estate transactions provided to M & D Beer.

164. During the Law Society's investigation of the Solicitor's books and records, payments were being made to Northern Courier and Para-Legal Services on a continual basis for real estate transactions. On September 14, 1994, the Solicitor was asked about these disbursements and the Solicitor advised that Northern Courier and Para-Legal Services was a company owned by his wife. At that time, the Solicitor could not produce a copy of the registration for Northern Courier and Para-Legal Services.

165. On September 14, 1994, the Solicitor was asked if he was disclosing to his clients that he had an interest in Northern Courier and Para-Legal Services. The Solicitor replied that he did not advise his clients as to this interest. The Solicitor provided no reason why he did not disclose his interest to his clients.

166. Invoices in support of the trust disbursements made to Northern Courier and Para-Legal Services could not be located in any real estate file reviewed at random during the September 14, 1994 examination. The Solicitor was questioned about whether or not he was producing invoices for his clients. The Solicitor advised that he was not. The Solicitor was advised that invoices were required in support of disbursements from a client trust ledger and was referred to Rule 9 - Commentary 8 - Hidden Fees. He was asked to produce books, records and invoices relating to Northern Courier and Para-Legal Services company. The Solicitor advised that his wife looked after that portion of the business and he would ask her for them.

167. After the Law Society inquiry about the Northern Courier and Para-Legal Services company, the Solicitor provided his secretary Cynthia Tough with blank letterhead for Northern Courier and Para-Legal Services. The Solicitor asked Ms. Tough to type 3 separate accounts which were similar in nature; attached as Exhibit 87 are copies of the accounts. A number of photocopies were then made and attached to the M & D Beer accounts. Most of the M & D Beer accounts did not agree to the Northern Courier and Para-Legal Services accounts attached thereto. Ms. Tough confirms that she had never seen the Northern Courier and Para-Legal Services letterhead provided by the Solicitor before the Law Society's attendance at his office on September 14, 1994. The accounts from Northern Courier and Para-Legal Services all appear to have been prepared after the initial inquiry.

26th September, 1996

168. On September 22, 1994 the Solicitor left for the Law Society a file folder containing M & D Beer accounts with Northern Courier and Para-Legal Services invoices attached thereto. The Solicitor did not provide the books and records relating to the company nor did he provide a copy of the company registration. The Solicitor did leave a handwritten note, attached hereto as Exhibit 88. The note refers to leaving for review the M & D and Northern Accounts and looking forward to any comments. The Solicitor also mentions that he has called Practice Advisory for their guidelines. On October 14, 1994, Practice Advisory returned the Solicitor's call. A copy of the Practice Advisory record is attached as Exhibit 89. Page 1, paragraph 4 notes the Solicitor's discussion with Practice Advisory regarding the Rule 9 issue wherein a Solicitor has a financial interest in a management company. Full disclosure is required when the company bills a client for disbursements.

169. The Solicitor facsimiled to the Law Society a cover sheet, attached as Exhibit 90, stating that he was enclosing the courier information as requested, however, as Valerie Grant, his accountant, was ill, he would provide the balance of the information requested from him on September 14, 1994 and it would follow A.S.A.P on the following Wednesday. The Solicitor also notes that he is re-doing the Northern invoice to indicate that he has a financial interest. With reference to this note, the Solicitor was to provide the books and records regarding the Northern Courier and Para-Legal Services Company. On March 28th, 1995, source documents for Northern Courier and Para-Legal Services Company were received but no proper journals were provided. The Company has been registered under the Business Names Act.

170. With respect to the Immediate Delivery & Courier invoice provided by the Solicitor, a copy of which is attached hereto as Exhibit 91, 14 out of the 19 items on the courier bill are deliveries for \$10.80 or less. The Solicitor's standard \$31.03 courier charge is not representative of the actual charges. Furthermore, the Solicitor's account with Immediate Courier is outstanding with a balance due and owing as of September 30, 1994 in the sum of \$1,478.23. Therefore, the Solicitor has recovered the courier charge from the client in the sum of \$31.03 but has not attended to the payment of the actual courier fee.

171. Due to the Solicitor's failure to maintain books and records for Northern Courier and Para-Legal Services, payments by Northern Courier to Immediate Courier cannot be traced to ensure disbursements have been paid. The clients had remitted funds to cover these disbursements, as set out in Appendix "B".

172. On October 11, 1994, Dorthy Beer confirmed that the Solicitor paid her agency fees to search and close a real estate transaction from Northern Courier and Para-Legal Services. Attached as Exhibit 92 is a photocopy of a blank cheque with Northern Courier and Para-Legal noted on the cheque. Any disbursements incurred by Ms. Beer in searching the real estate transaction were usually paid with a separate cheque out of the Solicitor's trust account.

173. Ms. Beer advised that the real estate documents were usually delivered to the Whitby Registry office by either the Solicitor's secretary or his son P.J. Heslin. Immediate Courier was sometimes called upon to deliver real estate documents.

174. Appendix "B" identifies disbursements made from Northern Courier and Para-Legal Services to M & D Beer. The columns are identified as to which account the funds were disbursed from (i.e.; M & D Beer/Northern Courier and Para-Legal Services).

174. A sample of 36 files were tested to identify the "hidden fee" the Solicitor made from his clients while charging the extra fee through his company Northern Courier and Para-Legal Services. The 36 real estate files were tested for the months of July, August and September, 1994. The average "hidden fee" per file was \$91.88.

175. The Solicitor states that the company Northern Courier and Para-Legal Services belonged to his wife Jessica, who presently is attending the University of Toronto studying for her Masters in English and Drama. The Solicitor advises that his wife maintains the accounting records for the company and keeps the records "straight". She pays various bills from the company. The Solicitor could not expand or explain in detail any other bills except for the courier and search/closing fees. He explained that the company was developed as a cost control factor because his law practice was losing money on search and courier expenses. The Solicitor advises that in some months his courier charges from Immediate Delivery exceeded \$1,200.00.

Particular 2(h) Borrowing from Clients

176. The Solicitor borrowed the sum of \$20,000.00 from Lee Management for his personal use. Lee Management is a business owned by Shirley Anne Bain (nee Shirley Sylvester) and Dr. Leslie Bain who are also clients of the Solicitor's.

177. The Solicitor represented Mrs. Bain and Dr. Bain in January of 1992 when incorporating a company for them known as 962275 Ontario Inc. carrying on business as Lee Management. A copy of this incorporation is attached hereto as Exhibit 93. The Solicitor billed his clients for work completed by a fee billing dated January 20, 1992, a copy of which is attached hereto as Exhibit 94.

178. On May 8, 1992 a mortgage was registered from the Solicitor to 962275 Ontario Inc. by Instrument No. 201650 at the Registry Office for the Registry Division of Port Hope against property municipally known as 51 John Street, Port Hope, a copy of which is attached hereto as Exhibit 95. The Solicitor prepared the document. It would appear that the Solicitor acted for himself and Lee Management Group. The borrowing took place after the Solicitor acted for Mrs. Bain and Dr. Bain thus, the Solicitor breached Rule 7 of the Rules of Professional Conduct by borrowing from his clients.

179. The Solicitor advises he had an independent solicitor search title and report on the transaction.

180. The Solicitor purchased the property at 51 John Street on June 27, 1991 for the sum of \$155,000.00 from Helen Ruth Hogg. The Solicitor assumed the mortgage in favour of Canada Trustco Mortgage Company for the sum of approximately \$93,000.00. A second mortgage was given to Helen Ruth Hogg for the sum of \$53,517.39 and registered on June 27, 1991 as Instrument No. 107825 at the Registry Office for the Registry Division of Port Hope. The third mortgage registered in favour of 962275 Ontario Inc. (Lee Management Group) is in the sum of \$20,000.00. A copy of the abstract is attached hereto as Exhibit 96. There appears to be insufficient equity in the property to cover the third mortgage, as noted below:

26th September, 1996

Purchase price	\$ 155,000.00
1st mortgage (approximately)	(\$ 93,000.00)
2nd mortgage	(53,517.39)
3rd mortgage	(20,000.00)
TOTAL:	(\$166,517.39)
DIFFERENCE:	(\$ 11,517.39)

182. Presently, the mortgage is in arrears and Dr. and Mrs. Bain have commenced a Civil Action against Mr. Heslin by way of Statement of Claim, attached hereto as Exhibit 97. Dr. and Mrs. Bain are represented by Rita Bambers of Dutton, Brock, MacIntyre & Collier. On August 22, 1994, Ms. Bambers, on behalf of her clients, forwarded a letter to the Solicitor advising him of his responsibility to the mortgage arrears. A copy of this letter is attached hereto as Exhibit 98.

183. On March 15, 1995, Mrs. Bain confirmed that she and her husband were clients of the Solicitor's and had been for a number of years. Mrs. Bain provided a copy of the Solicitor's fee billing to Shirley Sylvester and Richard Bain dated March 15, 1990, a copy of which is attached hereto as Exhibit 99. The Solicitor represented the Bains when they purchased their house at 819 Bessborough Drive in Oshawa. The Solicitor also represented the Bains on various other matters including a wrongful dismissal matter and the incorporation of Lee Management Group.

184. Mrs. Bain further explained that sometime in May of 1992 the Solicitor approached Dr. and Mrs. Bain because he heard that Dr. Bain had money that he wanted to invest. The Solicitor advised them that he wanted to borrow \$20,000.00. Mrs. Bain assumed that it was because the Solicitor was at the time opening up the Pickering law office and needed the funding.

185. Dr. Bain advised that he thoroughly discussed the Solicitor's financial status with him. The Solicitor assured Dr. and Mrs. Bain that he had no financial problems. The Solicitor failed to disclose to Dr. and Mrs. Bain the extent of his debts. Based on the information provided, Dr. Bain loaned the \$20,000.00 to the Solicitor through Lee Management Group. The Bains did not obtain independent legal representation for they trusted the Solicitor.

186. Dr. and Mrs. Bain took, as security for the \$20,000.00 loan, a mortgage on the Solicitor's property located at 51 John Street in Port Hope. The Bains thought the Solicitor registered the mortgage as a second. It was not until sometime later that they discovered their mortgage was a third.

187. Sometime in the fall of 1992, the Solicitor's post-dated cheques to the business Lee Management Group began returning due to insufficient funds (NSF). Dr. and Mrs. Bain were forced to take legal action in order to collect payment from the Solicitor.

188. The Solicitor admits to borrowing \$20,000.00 from Dr. and Mrs. Bain, and denies that they were clients at the time.

189. Presently, the mortgage is in arrears. The Solicitor is not sure of the amount but advises that definitely the principal is still owing. On February 8, 1995 the Solicitor sent a facsimile to Messrs. Dutton, Brock offering a proposal to pay back the mortgage. A copy of this facsimile is attached hereto as Exhibit 100. To date, the mortgage is still outstanding.

SOLICITOR'S CIRCUMSTANCES

190. At the relevant times the Solicitor was handling a very busy practice (opening 200 files a year) and working ten hours a day.

191. During the same period of time, the Solicitor was under contract to the C.A.W. and appeared in family court in Cobourg, Port Hope, Belleville, Peterborough, Lindsay and Oshawa.

192. In order to promote mortgage work, the Solicitor opened a number of accounts at various banking institutions. This proliferation of accounts contributed to the disorganization which facilitated the misappropriation.

193. As the various shortages were uncovered, the Solicitor injected funds to correct the balances.

194. The Solicitor co-operated with the Society by making his books and records available and attempting to reconstruct the deficient records.

DISCIPLINE HISTORY

195. The Solicitor does not have a discipline history.

DATED at Toronto, this 19th day of January, 1996.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Peter Edward Heslin be disbarred.

REASONS FOR RECOMMENDATION

The solicitor in the Agreed Statement of Facts admits the particulars contained in the complaint, and further admits that the particulars are supported by the facts and that constitutes professional misconduct. The Committee finds Peter Edward Heslin guilty of professional misconduct.

Counsel for the Law Society directed the Committee's attention to the case of Bolton v. The Law Society, which among other things states the following:

"The professions most valuable asset is its collective reputation and the confidence which that inspires.

But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.

The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is a part of the price.

Counsel for the Law Society also directed the Committee to quote in the matter of Charles W. Sommers, an attorney at law, 114 NJ 209, decided February 17, 1989. In that matter disciplinary proceedings were instituted against the attorney. The Supreme Court of New Jersey held that misappropriation of client's tax refund cheque warrants disbarment, notwithstanding that alcohol problems contributed to behaviour. It is stated:

26th September, 1996

"Misappropriation is any unauthorized use by a lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for lawyer's own purposes, whether or not he derives any personal gain or benefit therefrom.

Knowing misappropriation consists simply of a lawyer taking client's money entrusted to him, knowing that it is his client's money and knowing the client has not authorized taking; lawyers subjective intent to borrow or steal, pressures leading to take money, presence of attorney's good character and fitness and absences of dishonesty, venality or immorality are irrelevant.

Knowing and wilful misappropriation of tax refund cheque belonging to client warrants disbarment, notwithstanding the severe drinking problem and domestic and financial pressures have contributed to loss of critical control of judgment."

The Law Society, in arguing for a penalty of disbarment, also brought to the Committee's attention the matter of Ronald Paul Milrod whereby Convocation, on January 30, 1986 ordered that the said Ronald Paul Milrod be disbarred. Mr. Milrod misappropriated \$75,000.00 from an estate, forged a Will and prepared a false Estate Statement. There was no evidence Mr. Milrod used drugs or alcohol. He had co-operated fully with the Law Society since his misconduct came to the Society's attention. He also made complete restitution of the misappropriated funds. For seventeen years he had an unblemished record, placed service to his clients ahead of personal gain. He was a good father and respected member of his community and who acted at a time when he was under considerable financial and emotional stress. Counsel for Mr. Milrod submitted that he should be permitted to resign. The Committee stated that:

"The Society can not countenance theft and fraud by its members, and must express its disapproval in no uncertain terms. The penalty of disbarment is not meant to be reserved only for members who are thoroughly lacking in good qualities; experience shows that the penalty attends the tragic downfall of good lawyers who succumb to pressures frequently as it is the fitting conclusion of an evil career."

Counsel for the Law Society in arguing for a penalty of disbarment referred the panel to the decision of Convocation in the matter of George Flak. In that matter, the Solicitor was granted permission to resign.

In that matter, it is stated as follows:

"In order to maintain public confidence, it is appropriate to disbar members of the profession who have been found guilty of misappropriation of funds. The message needs to be very clear to the profession that the public expects nothing less than the termination of a members privilege to practise under these circumstances. There is no issue in this case as to the termination of practise. The issue is whether he should be disbarred or given permission to resign. Permission to resign should be reserved for those cases where there are mitigating circumstances that do not merit the most severe penalty of disbarment."

The Committee was referred to Lawyers and Ethics, Profession Responsibility and Discipline by Gavin McKenzie (Carswell) at page 26.17:

"Cases in which lawyers have been permitted to resign are usually those in which misconduct is sufficiently serious to justify disbarment but in which mitigating circumstances persuade the Benchers that the stigma of disbarment in addition to withdrawal of the lawyer's right to practise law would be unfair. The practical result of the penalty is the same, except to the extent that an Admission Committee may give more favourable consideration to an application for re-admission brought by a former lawyer who has been given permission to resign."

Counsel for the solicitor referred the Committee to the matter of Farouq Mallal.

In that matter, the solicitor abandoned his practise in September of 1991 and left the country. The following month he telephoned his lawyer in Ottawa, when he was out of the country, with instructions to inform the Society that he had misappropriated over \$31,000.00 of his client's funds.

The solicitor and the Society jointly submitted that he be allowed to resign his membership. He had admitted the misconduct and thereby saved the Society time and expense prosecuting the complaint. He had voluntarily given an undertaking not to practise law in October of 1992. The amounts misappropriated were relatively small and there was almost immediate restitution of the funds. The amount borrowed from the client had been repaid. Clients whose funds had been taken were satisfied with the restitution and had withdrawn their complaints. The solicitor was suffering from a long standing substance abuse problem at the relevant time, a problem in relation to which he had since obtained professional assistance. Convocation accepted the recommendation of the Committee that the solicitor be permitted to resign.

The counsel for the solicitor referred the Committee to Gerald Oleh Jarson, Digest, October 1993.

In that matter the solicitor was nine months late in filing his forms. An investigation was commenced and the examination disclosed a shortage in his trust account. Between August, 1990 and June 1991, the solicitor misappropriated approximately \$22,300.00 and subsequently \$24,000.00, and all funds had been replaced.

In that matter the Discipline Committee accepted the joint submission that the solicitor be permitted to resign his membership. The Committee referred to "fourteen impressive testimonial letters from other solicitors and members of the public". The solicitor also had a severe alcohol problem and medical evidence had linked his alcohol abuse to his misappropriations. The solicitor was receiving treatment for the alcohol problem and that "his prognosis was viewed as excellent".

Convocation accepted the Committee's recommendation.

The counsel for the solicitor further referred the Committee to the matter of Henry Peter Steponaitis, Digest, November, 1993.

In that matter the solicitor admitted, amongst other admissions, the misappropriation of about \$16,000.00 and the misapplication of \$30,690.00 of funds he had received in trust for a client. He also admitted to the misappropriation of \$16,675.00 and misapplication of \$13,000.00 from funds on behalf of another client. He repaid his client many months later in full satisfaction of the client's investment.

Evidence was led that the solicitor was suffering from a combination of bipolar effective disorder and chronic alcoholism.

26th September, 1996

The Discipline Committee stated the evidence before it would have inevitably led to a recommendation of disbarment if there had not been significant mitigating circumstances. There was a joint submission that the solicitor be permitted to resign. Convocation accepted the recommendation of the Committee that the solicitor be permitted to resign.

The counsel for the solicitor further referred the Committee to Meyer Korman, Digest, May 1994.

The solicitor acted in a conflict of interest, failed to report to clients, misapplied trust funds and made false and misleading statements. The Committee heard that the solicitor had a severe alcohol problem for which he was seeing a doctor. He was being treated for depression. He had been sued many times for negligence and was almost bankrupt. The Committee determined that the solicitor must leave the profession but in light of mitigating factors recommended that he be granted permission to resign. Convocation accepted the Committee's recommendation.

The last matter that the Committee was referred to was Nigel Svami.

In a fourteen month period from January 1, 1991, the solicitor submitted numerous legal aid billing certificates representing that he had performed work which was in fact performed by non lawyer assistants whose services were compensable at a lower rate or not at all. Certain billing certificates were overlapping and overcharges occurred, and as well improper travel expenses were claimed. He improperly commissioned affidavits without being present.

The Solicitor had no prior discipline history. Two members of the Discipline Committee recommended that he be permitted to resign, while one member recommended that he be disbarred. The majority noted that the mitigating circumstances of severe pressure from a rapidly growing refugee practise, and that the solicitor did not intentionally seek to submit inaccurate certificates but rather failed to adequately train and supervise his secretary who prepared the accounts. The majority noted the strong character evidence regarding the solicitor and the Legal Aid Plan had received restitution.

The dissent recommended disbarment because of a finding of recklessness amounting to wilful blindness.

At Convocation, the solicitor was granted permission to resign,

In arguing for the member to be granted permission to resign, counsel for the member argued that the mitigating circumstances in the case were exceptional and that the Committee should have regard to those circumstances in allowing the member permission to resign.

The counsel for the solicitor put forward mitigation as follows:

1. The solicitor has an exemplary family background including children who are extremely accomplished; one with a Masters degree from Carlton University, one is a Chartered Accountant, one who has a Master of Science degree and will be graduating with a Medical Doctorate this year, and one who is an Associate Director with a film company in British Columbia, having received a Certificate in film studies from Concordia University.
2. The solicitor obtained guardianship in regard to four children in 1975, when a cleaner in his law office suddenly died. The solicitor and his wife, as she then was, looked after the orphaned children after their mother died. The solicitor proceeded to bring up the four children as members of his own household. They have done well including one being an Architect, two Chartered Accountants, and one having a Master of Business Administration.

26th September, 1996

3. The Committee's view is that this would be the greatest mitigating circumstance in that obviously the solicitor was a model father, and person.
4. The solicitor wrote entrance exams for the Law Society of England and became entitled to practise as a solicitor in February of 1984.
5. He has taught at Carlton University.
6. He has lectured at Simon Fraser University.
7. He has been a member of various associations including Halton County Law Association where he was President in 1977, President of Arthritis Society for Halton between 1974 and 1976, the Treasurer of the Halton YMCA in 1970 as well as taking part in other community efforts.
8. In 1984 he taught at Mohawk College of Applied Arts and Technology in Hamilton.
9. He was a sessional lecturer with the Department of Law at Carlton University in Ottawa.

As well as the above mitigating circumstances, counsel for the member advised that of all the funds and monies misappropriated from his clients' trust accounts restitution was being attempted by the member, and that there was approximately \$21,300.00 currently unpaid.

The Committee found as a fact that the accounting records of the member were far from satisfactory and counsel argued that it was because of the poor accounting records and the running of, at times, three offices by the member in locations separated by distances of as much as 45 miles, that these were circumstances that should be taken into consideration as mitigating, enabling the Committee to recommend that permission be granted to resign from the Law Society.

The records that were reviewed and examined by the panel were in such disarray that the public could not have any confidence in the profession should the member be granted permission to resign using this as a mitigating factor under exceptional circumstances.

In reviewing the documentation it is clear to the panel that there were at least two trust accounts utilized and there is no doubt in the panel's mind that negligent, wilfully blind, haphazard maintaining of the bookkeeping records is not a mitigating factor which would warrant the member to resign.

Further, in this matter, there is no evidence before the Committee that the solicitor had psychiatric problems, nor alcohol problems, nor was he under any particular stress (Law Society and David John Fraser).

In Lawyers and Ethics by Gavin McKenzie, at page 26.17, it is stated:

"Discipline hearing panels are frequently held but acts of misappropriation should result in disbarment unless exceptional extenuating circumstances exist. An order of disbarment in such cases is made to preserve public confidence, to protect the public and to deter other lawyers from breaching the trust of their clients.

In this matter, save and except his exemplary ability in bringing up his children, and also adopting four children who were in need, making sure that all of them received their education, and considering his prior active community life, we find no extenuating circumstances that would avoid disbarment in regard to this matter.

26th September, 1996

Peter Edward Heslin was called to the Bar on March 17, 1967.

ALL OF WHICH is respectfully submitted

DATED this 26th day of June, 1996

Thomas E. Cole, Chair

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

- page 45 re: case of Bolton v. The Law Society - first sentence should begin " The profession's" not professions.
- page 45 re: case of Bolton v. The Law Society - 2nd paragraph, 2nd line - first word should be "maintain".
- page 45, 2nd last paragraph from the bottom, end of last sentence should read "....contribute to the behaviour".
- page 48, last paragraph, the words "bipolar effective" should be "bipolar affective"
- page 49, last paragraph, 4th line the word "practise" should be spelled "practice"
- page 52, re: Lawyers and Ethics, first line should read "Discipline hearing panels have frequently held that acts of misappropriation..."

The finding of professional misconduct was confirmed and the Report was adopted.

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

The solicitor made submissions in support of permission to resign.

Ms. Cowie made submissions in support of disbarment.

There were questions from the Bench.

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

It was moved by Mr. Bobesich, seconded by Mr. Carey that the solicitor be granted permission to resign.

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

It was moved by Mr. Adams but failed for want of a seconder that the matter be adjourned to permit the solicitor to file additional material.

Counsel, the solicitor, the reporter and the public were recalled for further questions from the Bench.

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

The Bobesich/Carey motion carried.

26th September, 1996

The Wilson/Crowe motion was not put.

Mr. Carey is to provide Reasons.

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

Convocation took a brief recess at 3:30 p.m. and resumed at 3:45 p.m.

Re: Ritchie James LINTON - Brampton

The Secretary placed the matter before Convocation.

Messrs. Topp and Wilson and Ms. Angeles withdrew for this matter.

Ms. Brooks appeared for the Society. Mr. C. Brannigan appeared for the solicitor who was present.

Convocation had before the Report of the Discipline Committee dated 11th March, 1996, together with the Affidavit of Service sworn 22nd March, 1996 by Louis Katholos that he had effected service on the solicitor on 20th March, 1996 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on 27th June, 1996 (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

Jane Harvey, Chair
Richmond C. E. Wilson, Q.C.
Nora Angeles

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

Janet Brooks
for the Society

RITCHIE JAMES LINTON
of the City
of Brampton
a barrister and solicitor

J. Paul Bannon
for the solicitor

Heard: August 31 &
December 18, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On February 14, 1995, Complaint D489/94 was issued against Ritchie James Linton alleging that he was guilty of professional misconduct. This complaint was withdrawn on August 31, 1995 and replaced with Complaint D489a/94.

The matter was heard in public on August 31, 1995 and December 18, 1995 before this Committee composed of Jane Harvey, Chair, Richmond C.E. Wilson, Q.C., and Nora Angeles. The Solicitor was present at the hearing and was represented by J. Paul Bannon. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D489a/94

2. (a) He misled the investors and shareholders of 863609 Ontario Inc. in respect of the purchase on or about November 30, 1989 of the Rundle Park condominium complex in Edmonton, Alberta. In particular, in July, 1990 he falsely reported to them regarding the specifics of the transaction;
- (b) He misled the investors and shareholders of 863608 Ontario Inc. in respect of the purchase in or about February, 1990 of the Westbridge B Estates complex in Edmonton, Alberta. In particular, in April, 1990 he falsely reported to them regarding the specifics of the transaction;
- (c) He breached Rule 5 of the Rules of Professional Conduct by acting in conflicts of interest. He represented both The Mortgage Shoppe and Olga Janzen on mortgages and the assignment of mortgages from The Mortgage Shoppe to Olga Janzen, without advising Ms. Janzen of his financial interest in the Mortgage Shoppe, without recommending that she seek independent legal advice or representation and without obtaining her written consent to act;
- (d) He failed to report to his client, Olga Janzen, when he acted for The Mortgage Shoppe and Olga Janzen on the assignment to Olga Janzen of a mortgage made by Andrew and Barbary Timony to the Mortgage Shoppe.

Evidence

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

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D489a/94 and is prepared to proceed with a hearing of this matter on August 30 and August 31, 1995.

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 D489a/94 and this Agreed Statement of Facts with his counsel, J. Paul Bannon, and admits the particulars contained therein. The Solicitor also admits that the facts alleged in the Complaint supported by the facts as hereinafter stated constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar in 1978. He is a sole practitioner and practises in Brampton, Ontario.

Particular 2(a)

He misled the investors/shareholders of 863609 Ontario Inc. in respect of the purchase on or about November 30, 1989 of the Rundle Park condominium complex in Edmonton, Alberta. In particular, in July, 1990, he falsely reported to them regarding the specifics of the transaction;

5. By way of background, particular 2(a) results from the Solicitor's involvement in the purchase of a condominium complex in Edmonton, Alberta known as Rundle Park ("Rundle Park" property) and involve the following corporations and individuals:

- y. Herbie Parmar was a real estate agent with Sutton Group Real Estate in Brampton. He and Jagjit Singh Hans retained the Solicitor to, *inter alia*, act on the purchase of the Rundle Park property. Herbie (Herbans) Parmar is the anglicized name for Narinder Dev Sood, also known as David Sood. His spouse is Regbir Assi.
- z. Jagjit Singh Hans, who with Parmar, retained the Solicitor to act *inter alia* on the purchase. Jagjit Singh Hans' anglicized name is Tigar Jeet Singh.
- aa. 408438 Alberta Limited was a corporation incorporated by the Solicitor for Parmar and Hans and is wholly owned by 863609 Ontario Inc.
- bb. 863609 Ontario Inc. was a corporation incorporated by the Solicitor for Parmar and Hans. 863609 Ontario Inc. is the sole shareholder of 408438 Alberta Limited.
- cc. Jasbir Cheema and 8 other individuals invested in the Rundle Park complex through shares in 863609 Ontario Inc.

6. On July 21, 1989, an Offer to Purchase for \$7,170,000 (Document Book, Tab 1) was made with Herbans Parmar in trust signing as purchaser, N.D. Sood (also known as Herbie Parmar) as witness, and Dupuis Investments Limited/69903 Holdings Limited as vendors, accepting the offer on July 24, 1989. The transaction was to close on November 1, 1989.

7. In the summer of 1989, the Solicitor was retained by Herbie Parmar and Jagjit Singh Hans to act on their behalf on the purchase of the Rundle Park condominium complex in Edmonton, Alberta and to incorporate a company to act as a vehicle to purchase the property.

26th September, 1996

8. The Solicitor's advice was sought by Mr. Parmar and Mr. Hans as to how they could re-sell or "flip" the Rundle Park property to obtain a profit.

9. On September 6, 1989, Hans, in trust, entered into a second Offer to Purchase the Rundle Park property. The terms of the second Offer were virtually identical to the first Offer to Purchase with the exception that the vendor was 401110 Alberta Ltd. and the purchase price was \$8,010,000, that is, \$840,000 greater than the purchase price in the first offer. (Document Book, Tab 2) The second Offer was made with Sukhjit Hans signing on behalf of her husband, Jagjit Singh Hans, in trust for an Alberta corporation to be formed as purchaser, N.D. Sood as witness, and 401110 Alberta Limited as vendor, with Herbie Parmar as witness. The closing date of the transaction was also November 1, 1989. In fact, 401110 Alberta Ltd. did not own the property and did not exist at that time. The Solicitor had a copy of this Offer prior to April 1990.

10. On September 14, 1989 the Solicitor incorporated 408438 Alberta Limited. (Document Book, Tab 3). On October 19, 1989 the Solicitor incorporated 863609 Ontario Inc. in Ontario (Document Book, Tab 4). 408438 Alberta Limited was ultimately the purchaser of the condominium complex. 863609 Ontario Inc., as the sole shareholder of 408438 Alberta Limited, was the company through which individuals invested in the purchase condominium complex.

11. Parmar, Hans, and Paul Toor (also known as Bhadur Toor) another real estate agent with Sutton Group were soliciting people to invest in the purchase of the Rundle Park property. Their representations to the investors were:

- dd. that the complex was being purchased for \$8.01 million and was worth much more;
- ee. that Parmar and Hans were investing \$500,000 each in the project;
- ff. that investors would double their investment within 3 to 6 months; and
- gg. that they were already considering offers on the property.

12. A copy of the Shareholders Register of 863609 Ontario Inc. is attached at Tab 5 of the Document Book. Parmar and Hans were shareholders in the company. After agreeing to invest, some of the investors forwarded cheques to Hans. The cheques were forwarded to Hans based on his representation that the cheques would be applied to help cover a deposit of \$100,000 which he represented that he had made on the original Offer to Purchase. The remainder of the investment funds were forwarded by cheque to the Solicitor in Trust.

13. The Solicitor received \$500,096.60 from investors into his Trust account during October and November, 1989 (Document Book, Tab 6), as follows:

NAME	AMOUNT
Jasbir Cheema	\$96,000.00
Surinder Toor	65,802.00
Jagroop Hans	40,500.00
Harold Wideman	177,134.00
Joginder Hans	40,525.00
Kulwant Gundu	81,000.00
Subtotal	500,096.00
Jagjit Hans (loan)	130,000.00
Total	630,096.00

The receipt of \$130,000 attributed to Jagjit Hans is shown as a loan from Hans to the company on the Solicitor's books and records. The Solicitor was informed by Hans that it was a loan from him to the company since the company was short of funds required to close the transaction.

14. During November, 1989, the Solicitor forwarded funds to the law firm he retained in Alberta to act for the corporation on the purchase. This Alberta law firm was Cruickshank, Phillips, Karvellas & Connauton ("Cruickshank, Phillips"). A copy of the Solicitor's trust ledger showing the funds received and disbursed by the Solicitor is attached at Tab 6 of the Document Book.

15. The Solicitor disbursed the following amounts to Cruickshank, Phillips:

DATE	AMOUNT	
November 1, 1989	\$ 150,000.00	
November 28, 1989	325,000.00	
November 30, 1989	125,000.00	
Total	600,000.00	
	(556,658.52)	This amount was later paid by Cruickshank, Phillips to the vendor's solicitors
	43,341.48	This amount was later disbursed by Cruickshank, Phillips in payment of their account and for real estate commissions

16. The closing of the purchase transaction was delayed until November 30, 1989 and, on that date, the transaction closed in escrow. The delay in closing was due to a lack of funds to close the transaction. The transaction closed with 408438 Alberta Ltd. purchasing the property for \$7,170,000.00. There was no subsequent or simultaneous sale for the purchase price of \$8,010,000. The Solicitor was aware of these facts at the time.

17. The Transfer of Land Affidavit dated November 28, 1989 which was registered on title stated that the property was purchased by 408438 Alberta Limited for \$7,170,000 (Document Book, Tab 7).

26th September, 1996

18. On or about January 2, 1990, the Solicitor received a reporting letter dated January 2, 1990 from Cruickshank, Phillips. The reporting letter enclosed a Statement of Adjustments which showed that the purchase price for the property was \$7,170,000 and that the cash received to close the transaction was \$556,658.52 (Document Book, Tab 8).

19. The Solicitor was therefore aware that the actual purchase price of \$7,170,000 was made up of the following:

DESCRIPTION	AMOUNT
Deposit made by Jagjit Hans	\$ 100,000.00
First mortgage with Morguard Investments assumed	2,138,045.85
Second Mortgage with Metro Trust assumed	3,411,230.93
Vendor take back third mortgage	688,769.07
Cash required to close	556,658.52
Tenants' damage deposits	60,773.79
Real estate commission credit (to be paid at a later date)	215,100.00
Credit in tenants' account	(578.16)
Total	\$7,170,000.00

20. Additional investors were solicited by Hans after the transaction closed. Hans received additional funds by purporting to sell some of his shares in the corporation, 863609 Ontario Inc. One of these investors was Amrik Saini. In January 1990, Mr. Saini forwarded his investment cheque to the Solicitor, in Trust, as supported by the document at Tab 9 of the Document Book. A cheque was written by the Solicitor to Hans from the Trust account on the same day for \$50,000.

21. On or about May 17, 1990, the Solicitor received a further reporting letter from Cruickshank, Phillips dated May 17, 1990. This reporting letter enclosed a Statement of Funds Received and Disbursed which, like the January 2, 1990 report, stated that the cash received by the vendor to close the transaction was \$556,658.52 (Document Book, Tab 10).

22. The Solicitor prepared and sent a reporting letter dated July 10, 1990 together with an Amended Statement of Adjustments and a Statement of Receipts and Disbursements to the investors/shareholders in 863609 Ontario Inc. (Document Book, Tab 11) The letter and the accompanying Statements purported to report on the purchase of the Rundle Park property.

23. In his reporting letter the Solicitor stated, *inter alia*, that the property had been purchased for \$8.01 million and that all shareholders had contributed to the balance due on closing, as follows:

26th September, 1996

"The transaction was completed in accordance with the terms of an Agreement extended (*sic*) into by Jagjit Hans on behalf of the corporation as purchaser at a total price of \$8,010,000.00, on the further terms and conditions as set-out in the Agreement. The transaction closed on November 30, 1989, and funds were provided by all of the shareholders to provide the balance due. Please refer to the statement of adjustments enclosed herewith."

24. In his Amended Statement of Adjustments, the Solicitor stated, *inter alia*, that the purchase price of the property was \$8.01 million and that the cash used to close the transaction was \$1,536,758.52.

25. In his Statement of Receipts and Disbursements of Funds referred to in paragraph 22, the Solicitor stated that he received the following amounts for the purchase of the property:

DATE OF RECEIPT	NAME	AMOUNT
November 22, 1989	Jagjit Hans	\$ 480,000.00
November 22, 1989	Regbir Assi	160,000.00
November 22, 1989	H. Parmar	330,000.00
	Total	970,000.00

26. In fact, as the Solicitor was aware at the time of his reporting letters: the Rundle Park complex had been purchased for \$7.17 million; Cruickshank, Phillips had disbursed \$556,658.52 as the balance due on closing to the vendors; and, no real investment had been made to the balance due on closing by Herbie Parmar, his spouse Regbir Assi or Jagjit Singh Hans.

27. The Solicitor knew that his reporting letter of July 10, 1990 and the accompanying Amended Statement of Adjustments and Statement of Receipts and Disbursements contained false statements and that the investors/shareholders would rely upon them, believing them to be true. The Solicitor was aware that at the time, the Rundle Park property was being mismanaged by Parmar and Hans; he hoped that by holding off the investors/shareholders from determining the true facts regarding the purchase, he would provide Parmar and Hans with the opportunity to sell the property at a profit and repay the investors.

28. Parmar and Hans continued to manage 863609 Ontario Inc. and the Rundle Park complex and the Solicitor continued as corporate counsel from the date of the purchase until in or about May 1991.

29. The Solicitor's reporting letter and statements resulted in forbearance by the investors in inquiring into the true facts of the purchase.

30. In May 1991, Jasbir Cheema, one of the investors/shareholders, went to Edmonton to inspect the Rundle Park property. Mr. Cheema also visited the various parties involved in the transaction in Edmonton and received the original Statement of Adjustments, Offer to Purchase and Land Transfer Affidavit, all of which indicated that the statements in the Solicitor's reporting letter of July 10, 1990 and accompanying Statements were false.

31. Upon his return to Ontario, Mr. Cheema informed the other shareholders of the misrepresentation as to the purchase price. They then attempted to manage the corporation, the condominium complex and refinance the property as the mortgages matured. The property was eventually lost when the mortgages went into default and the property was taken over by the mortgagees. The investors /shareholders lost their entire investment, totalling over \$800,000.

26th September, 1996

32. Hans had supposedly provided the \$100,000 deposit for the purchase and had, according to the Solicitor's records, provided a loan of \$130,000 towards the purchase. Hans received \$90,000 from the investors towards repayment of the \$100,000 deposit he had originally made with the Offer to Purchase:

NAME	AMOUNT
Jasbir Cheema	\$ 15,000.00
Surinder Toor	15,000.00
Harold Wideman	30,000.00
Kulwant Gundu	15,000.00
Jagroop Hans	7,500.00
Joginder Hans	7,500.00
Subtotal	\$90,000.00
Balance of contribution by Hans	\$10,000.00

33. The following is a list of those investors who bought shares from Hans after the transaction had closed. Through these purchases, Hans fully recouped his loan of \$130,000 to the company and the balance of the deposit:

NAME	AMOUNT	DATE OF RECEIPT OF FUNDS
Dr. S.K. Suppal	\$ 100,000.00	Paid to Hans on January 9, 1990
Amrik Saini	50,000.00	Delivered to the Solicitor in Trust on January 15, 1990
Iftakar Kalyani	95,000.00	Paid to Hans on March 16 and 18, 1990
Total	\$ 245,000.00	

34. On April 18, 1995, in the Ontario Court (Provincial Division) at Milton, Ontario, before His Honour Judge Sharpe, the Solicitor pleaded guilty to and was convicted of the charge that:

"he did knowingly make false documents, to wit: A reporting Letter addressed to the Shareholders and Director of 863609 Ontario Inc. regarding the purchase of the Rundle Park Project in Edmonton, Alberta, an Amended Statement of Adjustments and a Statement of Receipts and Disbursements, with intent that they be used or acted upon as genuine and thereby did commit forgery contrary to section 367(1) of the Criminal Code, R.S.C. 1985, c. C-46, as amended."

At the request of the Solicitor's lawyer, the Court did not receive any facts in respect of the plea. The sentencing of the Solicitor was adjourned to September 26, 1995 so that in the interim, the charge of professional misconduct herein could be dealt with. A copy of the indictment and a transcript of the proceedings on April 18, 1995 are attached hereto at Tab 12 of the Document Book.

Particular 2(b)

He misled the investors/shareholders of 863608 Ontario Inc. in respect of the purchase in or about February, 1990 of the Westridge B Estates complex in Edmonton, Alberta. In particular, in April, 1990 he falsely reported to them regarding the specifics of the transaction;

35. By way of background, particular 2(b) results from the Solicitor's involvement in the purchase of a condominium complex in Edmonton, Alberta known as Westridge B Estates ("Westridge" property) and involve the following corporations and individuals:

- hh. Herbie Parmar was a real estate agent with Sutton Group Real Estate referred to in particular 2(1) of the Complaint herein.
- ii. Jaswant Sekhon another real estate agent with Sutton Group Real Estate, who with Herbie Parmar retained the Solicitor to act *inter alia* on the purchase of the Westridge property.
- jj. 863608 Ontario Inc. was a corporation incorporated by the Solicitor for Parmar and Sekhon.
- kk. David Hunter and approximately 28 other individuals invested in the Westridge property through shares in 863608 Ontario Inc.

36. In the summer of 1989, the Solicitor was retained by Herbie Parmar and Jaswant Sekhon to act on their behalf on the purchase of the Westridge B Estates condominium complex in Edmonton, Alberta and to incorporate a company to act as a vehicle to purchase the property.

37. On or about August 12, 1989, an Offer to Purchase for \$3,150,000 (Document Book, Tab 13) was made with Jaswant Sekhon signing for 402920 Alberta Limited as purchaser. The vendor, 372071 (misstated as 37207) Alberta Limited counter-offered at \$3,175,000 on August 30, 1989 and Sekhon signed back accepting on September 6, 1989. The transaction was to close on November 30, 1989.

38. The Solicitor's advice was sought by Mr. Parmar and Mr. Sekhon as to how they could re-sell or "flip" the Westridge property to obtain a profit.

39. On or about October 4, 1989, a second Offer to Purchase for \$3,600,000 (Document Book, Tab 14) was made by Prab Kapur in trust for a corporation to be incorporated as purchaser and 402920 Alberta Limited as vendors. The transaction was to close on November 30, 1989. 402920 Alberta Limited is not owned by these individuals. It was a "shelf" company purportedly purchased from the Alberta law firm of McLennan, Ross. (Document Book, Tab 15). The Solicitor had a copy of this Offer.

40. On October 19, 1989, the Solicitor incorporated 863608 Ontario Inc. (Document Book, Tab 16).

41. Parmar and Sekhon were soliciting people to invest in the purchase of the Westridge property and also had other agents at Sutton Group solicit investors. They had prepared a listing information sheet to show to potential investors which stated the price for the property was \$3.6 million (Document Book, Tab 17). Their representations to the investors were;

- ll. that the complex was being purchased for \$3.6 million and was undervalued; and
- mm. that together Parmar and Sekhon were investing \$500,000 in the project and that they would double their investment within 6 months.

26th September, 1996

42. After agreeing to invest in this project the investors forwarded cheques to the Solicitor in Trust. These investor cheques were received by the Solicitor beginning in September, 1989 and continued until January, 1990.

43. The Solicitor received the following amounts into his Trust account from investors between September, 1989 and January, 1990 (Document Book, Tab 18):

NAME	AMOUNT
Prab Kapur	\$120,000.00
Marie Roberts	50,000.00
Dave Hunter	50,000.00
Ramona Benesch	37,500.00
Jaswant Sekhon	5,000.00
Junipero Lagtapon	25,000.00
Dominic Belmonte	10,000.00
Gloria Aragona	10,000.00
Mario Tiano	10,000.00
Maria Cece	10,000.00
Franco Viti	10,000.00
Matt Stairs	25,000.00
Tessie Borg	10,000.00
Anna Narday	5,000.00
Maureen & Doris Gilleece	20,000.00
Eddie Detharco	20,000.00
Ruth Blackwood	20,000.00
Doris Perry	10,000.00
Elizabeth Cyarto	10,000.00
Susan Parker	5,000.00
Doris Heavenha	10,000.00
Darshan Basran	25,000.00
Sandu	25,000.00
Iftakar Kalyani	40,000.00
Sarab	25,000.00
Amarjeet Sangha	10,000.00
Deposit from branch of investor funds (not those of Parmar or Sekhon)	25,000.00

NAME	AMOUNT
Subtotal	\$ 622,500.00
Deposit	(50,000.00)
Subtotal	572,500.00
Jagjit Hans (referred to as "loan proceeds" in the Solicitor's records)	132,000.00
Total	\$704,500.00

44. Jagjit Hans was not, to the Solicitor's knowledge, an investor or shareholder of this company; however he provided \$132,000 to close the transaction. This amount and the above mentioned \$5,000 received by the Solicitor from Sekhon are the only amounts received by the Solicitor from or on behalf of Hans and Sekhon for this investment. He received no funds from Parmar towards the purchase of the property.

45. The investors did not confirm particulars of the investment with the Solicitor prior to investing.

46. On September 14, 1989, the Solicitor forwarded the deposit of \$50,000 in the Offer to Purchase to the Solicitors for the vendors.

47. The Solicitor acted for one of the investors, Iftikar Kalyani, on a mortgage in December, 1989. (Document Book, Tab 19).

48. On December 12, 1989, 863608 Ontario was registered in Alberta (Document Book, Tab 20).

49. On January 5, 1990 and January 29, 1990, the Solicitor disbursed cheques of \$495,465 and \$116,000 respectively to the lawyers he retained in Alberta to act for the corporation on the purchase. These Alberta lawyers were Granton Patrick and John Sterk of McLennan Ross ("McLennan Ross"). A copy of the Solicitor's Trust ledger shows the funds received and disbursed by the Solicitor in respect of the transaction (Document Book, Tab 18). Funds disbursed were:

DATE	AMOUNT
January 5, 1990	\$ 495,465.00
January 29, 1990	116,000.00
Total	\$ 611,465.00
Paid to vendor's Solicitors	(610,845.16)
Paid to account of McLennan Ross	619.84

50. The effective date of the closing of the transaction was November 30, 1989 when Metropolitan Trust advanced the funds for the first mortgage on the property. The transaction closed with 86363608 purchasing the property for a purchase price of \$3,175,000. There was no subsequent or simultaneous sale for the purchase price of \$3,600,000. A lack of funds delayed the actual closing until February 13, 1990 when the last of the Land Transfers was registered. (Document Book, Tab 21) The Solicitor was aware of these facts at the relevant time.

51. The Land Transfer Affidavit dated November 27, 1989 and sworn February 7, 1990 and which was registered on title stated that property was purchased by 863608 Ontario Inc. for \$3,175,000 (Document Book, Tab 22).

52. The Solicitor was aware that the actual purchase price for the property of \$3,175,000 was made up of the following;

AMOUNT	DESCRIPTION
\$ 50,000.00	Deposit sent by the Solicitor on September 14, 1989
953.39	Interest on deposit
425,000.00	Vendor take back second mortgage
2,682,649.28	Cash required to close
21,337.12	Tenants damage deposits
(3,839.79)	Property tax adjustments
(1,100.00)	Legal fees on Vendor's take back mortgage
3,175,000.00	Total

53. The investors/shareholders took out a first mortgage on the property with Metropolitan Trust in the amount of \$2,150,000 and \$2,104,557.91 was advanced.

54. On or about March 14, 1990, the Solicitor received a reporting letter from McLennan Ross dated March 14, 1990. The reporting letter enclosed a Statement of Adjustments which showed that the purchase price for the property was \$3,175,000 and that the cash received from the Solicitor to close the transaction was \$611,465.00 (\$495,465.00 plus \$116,000.00). (Document Book, Tab 23).

55. On or about April 9, 1990, the Solicitor prepared and sent a reporting letter dated April 9, 1990 together with a Statement of Adjustments to the investors/shareholders in 863608 Ontario Inc. The letter and the accompanying Statement purported to report on the purchase of the Westridge property.

56. In his reporting letter dated April 9, 1990, (Document Book, Tab 24) the Solicitor stated, *inter alia*,

- nn. that the purchase price for the property was \$3.6 million;
- oo. that the balance due in cash on closing as at November 30, 1989 was \$3,107,649.28; and
- pp. that all cash delivered to the Solicitor's office from all the Co-owners totalled \$1,134,100.00.

57. In his Statement of Adjustments (Document Book, Tab 24), the Solicitor stated, *inter alia*, that the purchase price of the property was \$3.6 million.

58. In or about April 1990, following the mailing of the reporting letter of April 9, 1990, the Solicitor prepared a statement of receipts and disbursements of funds to support the information provided in the reporting letter of April 9th. A typed version of this document is at Tab 25 of the Document Book. This Statement was sent to investors/shareholders and stated that the Solicitor received the following amounts for the purchase of the property:

NAME	AMOUNT
Herbie Parmar	\$ 258,500.00
Jaswant Sekhon	258,500.00
Total	\$ 517,000.00

59. In fact, as the Solicitor was aware at the time of his reporting letter and statement: the Westridge property had been purchased for \$3,175,000; the Solicitor had disbursed cash of only \$611,465 to close the transaction; Parmar had not invested any funds; and Sekhon had invested only \$5,000.

60. The Solicitor knew that his reporting letter of April 9, 1990 and the accompanying Statement of Adjustments and Statement of Receipts contained false statements and that the investors/shareholders would rely upon them, believing them to be true. The Solicitor hoped that by holding off the investors/shareholders from determining the true facts regarding the purchase, he would provide Parmar and Sekhon with the opportunity to sell the property for a profit and repay the investors.

61. The Solicitor's reporting letter and statements resulted in some forbearance by the investors from inquiring into the true facts of the purchase.

62. Investors/shareholders began to be concerned about the investment. They made unsuccessful requests for information from the Solicitor from May 1990 through to March 1991. In June 1991, the investors complained to the Law Society, requesting a copy of the Solicitor's trust ledger. The Solicitor did not disclose it, claiming that it was not property of the investors.

63. The property was sold in January, 1992, due to problems with the property managers and mortgage defaults and inability to obtain renewals, for approximately \$3 million and investors would testify that they lost over \$500,000 of their investment.

Particular 2(c)

He breached Rule 5 of the *Rules of Professional Conduct* by acting in conflicts of interest. He represented both The Mortgage Shoppe and Olga Janzen on mortgages and the assignment of mortgages from The Mortgage Shoppe to Olga Janzen, without advising Ms. Janzen of his financial interest in the Mortgage Shoppe, without recommending that she seek independent legal advice or representation and without obtaining her written consent to act;

26th September, 1996

Particular 2(d)

He failed to report to his client, Olga Janzen, when he acted for The Mortgage Shoppe and Olga Janzen on the assignment to Olga Janzen of a mortgage made by Andrew and Barbara Timony to the Mortgage Shoppe.

64. Olga Janzen first became involved with the Solicitor when she answered a newspaper advertisement run by The Mortgage Shoppe in Brampton soliciting mortgage investments.

65. Ms. Janzen and her son in law, Mike Petryshen, visited The Mortgage Shoppe in April, 1990 to enquire about investing in mortgages. At all relevant times, the manager was Hans Van De Vyver. At all relevant times, the Solicitor was the sole owner and director of The Mortgage Shoppe.

66. Van De Vyver showed Ms. Janzen and Petryshen relevant documentation to make their investment decision, that is, credit checks, appraisals, net worth statements. Ms. Janzen was advised by Van De Vyver to permit The Mortgage Shoppe's lawyer, the Solicitor, to act for her in order to save legal costs. The manager then took Ms. Janzen and her son-in-law to the Solicitor's office to introduced them. Ms. Janzen eventually funded 7 separate second and third mortgages through The Mortgage Shoppe, including the following:

- a. Dunn second mortgage to The Mortgage Shoppe, assigned to Olga Janzen, Part of Lot 33, Concession 13, Township of Glamorgan, County of Haliburton, Ontario;
- b. Geddes second mortgage to The Mortgage Shoppe and Olga Janzen, 38 Oleander Crescent, Brampton, Ontario; and
- c. Timony third mortgage to The Mortgage Shoppe, assigned to Olga Janzen, R.R. #3, Milton, Ontario.

67. The Solicitor never disclosed his ownership of The Mortgage Shoppe to Ms. Janzen. No one acting on the Solicitor's behalf disclosed the Solicitor's ownership of The Mortgage Shoppe.

68. In all of these transactions, Ms. Janzen believed that the Solicitor was acting as her lawyer.

- a. Dunn mortgage to The Mortgage Shoppe assigned to Olga Janzen

69. The Mortgage Shoppe held a second mortgage for \$13,000 against a property owned by Elizabeth Dunn being Part of Lot 33, Concession 13, Township of Glamorgan, County of Haliburton, Ontario (the "Dunn mortgage"). The Mortgage Shoppe's mortgage was registered on February 21, 1990 (Document Book, Tab 26). The Solicitor acted for The Mortgage Shoppe and obtained a waiver of Independent Legal Advice from the mortgagors.

70. Ms. Janzen agreed to purchase the Dunn mortgage and the assignment from The Mortgage Shoppe to her was registered on April 20, 1990 (Document Book, Tab 27). The Solicitor acted for The Mortgage Shoppe and Ms. Janzen on the assignment.

710. Ms. Janzen received a reporting letter from the Solicitor dated May 4, 1990 (Document Book, Tab 28) in which he certified that she had a good and valid second mortgage on the property and thanked her for letting him act on her behalf.

72. The first mortgagee on the Dunn property, Municipal Savings and Loan, issued a Notice of Sale Under Mortgage on July 11, 1990. Ms. Janzen's mortgage fell into arrears in November, 1990. The property was eventually sold with a deficiency to the first mortgagee. With instructions from Ms. Janzen, the Solicitor obtained a judgement and proceeded with the garnishment of Dunn's wages. The Dunns both filed for bankruptcy on November 11, 1991 and Ms. Janzen's investment was lost.

b. Timony mortgage to The Mortgage Shoppe assigned to Olga Janzen

73. The Mortgage Shoppe held a third mortgage for \$13,500 against a property owned by Andrew Timony and Barbara Timony being Part Lot 8, Concession 3, Town of Halton Hills, Halton, Ontario (the "Timony property"). The Mortgage Shoppe's mortgage was registered on June 16, 1989 (Document Book, Tab 29). The Solicitor acted on the original mortgage transaction for The Mortgage Shoppe and obtained a waiver of Independent Legal Advice from the mortgagors.

74. The Mortgage Shoppe's mortgage on the Timony property was assigned to Olga Janzen. The assignment was registered on May 2, 1990 (Document Book, Tab 30). The Solicitor acted for Ms. Janzen for The Mortgage Shoppe on the assignment.

75. The Solicitor failed to send a reporting letter to Ms. Janzen regarding this transaction. He sent a letter enclosing a copy of the assignment to the manager of The Mortgage Shoppe and asked that it be forwarded to Ms. Janzen (Document Book, Tab 31).

76. This mortgage matured on April 15, 1991, but was not paid out or renewed and therefore went into default. The property was eventually sold by the prior mortgagees under Power of Sale proceedings with no funds available towards payment of the third mortgage and again Ms. Janzen's investment was lost.

c. Geddes mortgage to The Mortgage Shoppe and Olga Janzen

77. Ms. Janzen agreed to participate with a 56% share and The Mortgage Shoppe funded the remaining 44% share in a second mortgage of \$18,000 against a property owned by Gregory Geddes and Linda Geddes being Parcel 75-1, Section 43M-474, Lot 75, Plan 43M-474, City of Brampton, Ontario. The Solicitor acted for Ms. Janzen, The Mortgage Shoppe and the mortgagors on the transaction and obtained an waiver of Independent Legal Advice from the mortgagors which disclosed that he was acting for Olga Janzen (Document Book, Tab 32). The mortgage was registered on May 1, 1990 (Document Book, Tab 33).

78. The Solicitor sent a reporting letter to Ms. Janzen on June 11, 1990 (Document Book, Tab 34) in which he certified that she held a good and valid second mortgage on the property and thanked her for letting him act on her behalf.

79. On July 3, 1990 Ms. Janzen purchased the remaining 44% interest from The Mortgage Shoppe and the Transfer of Charge was registered the same day (Document Book, Tab 35). The Solicitor again acted for both sides of the transaction and sent a report to Ms. Janzen on July 9, 1990 (Document Book, Tab 36).

80. This mortgage fell into arrears in March, 1991. The property was eventually sold by the first mortgagee with no funds available towards payment of the second mortgage. Acting on instructions from Ms. Janzen, the Solicitor obtained a judgment against the Geddes. They made an assignment in bankruptcy on August 7, 1991 and Ms. Janzen's investment was lost.

26th September, 1996

81. With respect to particulars 2(a) and 2(b) herein, there is no allegation that there were trust defalcations by the Solicitor. Further, the Society is not in possession of evidence that the Solicitor in fact benefitted from the transactions in particulars 2(a) and 2(b) other than by way of legal fees. Investors in the Rundle Park and Westridge properties have placed the Lawyers Fund for Client Compensation on notice that they intend to make claims to the Fund; no claims have been made in respect of Ms. Janzen's losses.

VI. DISCIPLINE HISTORY

82. The Solicitor does not have a discipline record.

DATED at Toronto, this 31st day of August, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Ritchie James Linton be suspended for a period of 12 months and pay costs of the Law Society in the amount of \$10,000.00; \$5,000.00 to be paid forthwith and \$5,000.00 to be paid upon resumption of practice. The Committee also recommends that upon reinstatement the Solicitor be employed with a another Solicitor approved by the Law Society for a period of two years.

REASONS FOR RECOMMENDATION

Mr. Linton acted for purchasers of residential condominium buildings in Edmonton. We do not know if he drafted the agreements of purchase and sale to purchase the buildings but he did advise on flips to make the value of the properties as recorded in the Registry Office higher, and incorporated the corporate entities taking title, acted on the purchase (via Alberta Counsel) and prepared a reporting letter to the corporate directors who instructed him and to the investor shareholders to whom the directors sold shares in the corporate purchaser after the agreement of purchase and sale was signed.

Some of the investor shareholders brought their cheques to pay for their shares to Mr. Linton's office. The documentation on the sale of the shares of the corporate purchasers may or may not have been prepared by Mr. Linton. However, he had direct contact with a number of the investors in his offices and he sent a reporting letter to them.

It appears that the solicitor planned to carry out a flip from the purchasers to the purchasers at the higher purchase price but was unable or instructed not to do so. He also after closing spoke to a number of the investors and advised one of the investors he did not know who had contributed monies to the transaction, when in fact he did know or could have found out by consulting his trust account records.

In the reporting letters, the amended statement of adjustments and statements of receipts and disbursements all prepared by Mr. Linton, (and different from the truthful ones prepared by the Alberta solicitors) the purchase prices were reported \$840,000, and \$425,000 respectively higher than they actually were and Mr. Linton knew the figures to be incorrect.

In connection with count 2(c) of the Complaint we find that Mr. Linton did not advise Ms. Janzen of his personal interest in the mortgage brokerage business and did not recommend that she obtain independent legal advice. Ms. Janzen did not suffer loss as a result of Mr. Linton's actions, and she has not filed a claim.

26th September, 1996

We recommend the penalty of 12 months suspension because the conduct outlined above was a knowing misrepresentation to clients represented by a number of documents and possibly oral advice as well. The misrepresentation may have lead to loss suffered by investors (although appraisals indicate the properties were worth the inflated purchase price at the time the investors bought).

Investors in the properties have placed the Lawyers Fund for Client Compensation on notice that they intend to make claims to the Fund. Mr. Linton received no compensation for the transactions save legal fees which were not disproportionate to the work done. He played no role in encouraging the investors to invest.

He has no previous discipline history and is well regarded in the community.

Mr. Linton was charged and convicted of knowingly making false documents (forgery) under section 367 paragraph 1 of The Criminal Code and given a sentence of 30 days to be served on weekends plus 3 months probation.

The panel reviewed the authorities on penalty and differentiated this case, which involved misconduct, forgery, a criminal conviction and jail sentence from those involving those elements and personal gain or misappropriation of client funds which justify a penalty of disbarment. Accordingly, we chose a serious penalty, short of disbarment, and placed conditions on practice after the resumption of practice.

Ritchie James Linton was called to the Bar on April 13, 1978.

ALL OF WHICH is respectfully submitted

DATED this 11th day of March, 1996

Jane Harvey, Chair

There were no submissions, the finding was confirmed and the Report adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 12 months and pay costs in the amount of \$10,000, \$5,000 to be paid forthwith and \$5,000 to be paid upon resumption of practice. The Committee further recommends that upon reinstatement the solicitor be employed with another solicitor approved by the Society for a period of 2 years.

Ms. Brooks made submissions that there was an error in principle and that the solicitor be disbarred.

Mr. Brannigan made submissions in support of the 12 month suspension commencing November 1st, 1996 in order that the solicitor could wind up his practice.

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

It was moved by Mr. Crowe, seconded by Mr. Millar that the solicitor be disbarred.

Lost

26th September, 1996

It was moved by Mr. Swaye, seconded by Mr. Marrocco that the solicitor be suspended for 2 years together with the conditions set out in the Report.

Lost

It was moved by Ms. Puccini, seconded by Mr. Murray that the recommended penalty be adopted.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for a period of 12 months, pay costs together with the conditions set out in the Report.

CONVOCATION ROSE AT 4:30 P.M.

Confirmed in Convocation this 15th day of November

1996


Treasurer