

25th January, 1996

MINUTES OF DISCIPLINE CONVOCATION

Thursday, 25th January, 1996
9:00 a.m.

PRESENT:

The Treasurer (Susan Elliott), Armstrong, Arnup, Backhouse, Carpenter-Gunn, Crowe, Feinstein, Harvey, MacKenzie, Manes, Marrocco, Millar, O'Connor, Puccini, Ross, Sachs, Scott, Sealy, Strosberg, Swaye, Thom, Topp, Wilson and Wright.

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IN PUBLIC

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Mr. Brown, Senior Counsel-Discipline introduced Mr. George Hatley who would be acting as Duty Counsel.

Discipline Committee

Re: Byron Douglas LONEY - Barry's Bay

The Secretary placed the matter before Convocation.

Messrs. Topp and Wilson and Ms. Puccini withdrew for this matter.

Mr. Scott did not participate.

Ms. Jane Ratchford appeared for the Law Society. No one appeared for the solicitor nor was the solicitor present.

Ms. Ratchford requested an adjournment on consent to the February Discipline Convocation. She advised that the solicitor was unable to attend due to financial hardship and further advised that he would be filing a Notice of Disagreement.

Convocation granted an adjournment to the next Convocation Assignment Tribunal in February.

Counsel retired.

Re: Yaroslav MIKITCHOOK - Toronto

The Secretary placed the matter before Convocation.

Mr. Topp withdrew for this matter.

Mr. Scott did not participate.

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

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Mr. Perrier requested an adjournment on consent to the next Discipline Convocation in February due to a death in the family of the solicitor's counsel.

Convocation granted an adjournment to the next Convocation Assignment Tribunal in February.

Counsel retired.

Robert Marven SYER - Toronto

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye withdrew for this matter.

Mr. Scott did not participate.

Ms. Georgette Gagnon appeared for the Society and Mr. Martin Teplitsky appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 14th November, 1995, together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 29th November, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 7th December, 1995 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Gerald A. Swaye, Q.C., Chair
W. Michael Adams
Gordon Z. Bobesich

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

Christina Budweth
for the Society

ROBERT MARVEN SYER
of the City
of Toronto
a barrister and solicitor

Martin Teplitsky
for the solciitor

Heard: August 30, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 18, 1995, Complaint D409/94 was issued, On May 3, 1995, Complaint D49/95 was issued and on June 13, 1995, Complaint D163/95 was issued against Robert Marven Syer alleging that he was guilty of professional misconduct.

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The matter was heard in public on August 30, 1995 before this Committee composed of Gerald A. Swaye, Q.C., Chair, W. Michael Adams and Gordon Z. Bobesich. The Solicitor was in attendance at the hearing and was represented by Martin Teplitsky. Christina Budweth appeared on behalf of the Law Society.

DECISION

The following particulars of professional misconduct were found to be established:

Complaint D409/94

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending February 28, 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;

Complaint D49/95

2. a) He failed to provide a reply to the Law Society regarding the ongoing investigation of a complaint by Peter Schleifenbaum despite letters dated October 6, 1994 and January 26, 1995 and telephone requests left on December 5, 1994, December 6, 1994, December 8, 1994, January 10, 1995 and January 11, 1995.

Complaint D163/95

2. a) The Solicitor has failed to co-operate with the Law Society's representative, who attempted to conduct an audit pursuant to section 18 of regulation 708, when he failed to produce books and records as set out in section 15 despite:
- i) the Society's visit of February 8, 1995;
 - ii) the Society's letters of February 9, 1995, February 23, 1995 and March 10, 1995; and
 - iii) the Society's telephone calls of February 8, 1995.

Evidence

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

"AGREED STATEMENT OF FACTS -D409/94, D49/95, D163/95

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaints D409/94, D49/95 and D163/95, and is prepared to proceed with a hearing of these matters on August 30, 1995.

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.

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III. ADMISSIONS

3. The Solicitor has reviewed Complaints D409/94, D49/95 and D163/95 with his counsel, Martin Teplitsky, and admits the particulars contained therein. The Solicitor admits that the particulars together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 19, 1970. He practised as a sole practitioner until he was suspended on November 1, 1994 as a result of his failure to pay his late filing fee.

Complaint D409/94
Particular 2(a)
Failure to file for the fiscal year ended February 28, 1994

5. The Solicitor's fiscal year end is February 28th. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending February 28, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated September 7, 1994 (Document Book, Tab 1) was forwarded to the Solicitor by the Law Society. A copy of the Notice can be found in the.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated October 11, 1994 (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 4, 1994. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on October 28, 1994.

9. The Solicitor advised the Law Society by telephone on November 9, 1994 that he was working on his filing. A copy of the Law Society's handwritten notes is contained in the Document Book, Tab 3.

10. To date, the Solicitor has not filed the required forms.

Complaint D49/95
Particular 2(a)
Failure to reply to the Law Society

11. By letter dated December 16, 1993 (Document Book, Tab 4), Peter C. Schleifenbaum outlined his complaint to the Law Society regarding the Solicitor. Mr. Schleifenbaum, principle director of the Haliburton Forest & Wild Life Reserve Ltd., claimed that the Solicitor had not finalized a real estate tax assessment matter that had been ongoing since 1991.

12. By letter, dated January 27, 1994 (Document Book, Tab 5), the Solicitor requested confirmation that a complaint had been lodged against him, and requested that the letter of complaint be forwarded to him by facsimile transmission.

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13. By letter dated January 31, 1994 (Document Book, Tab 6), the Law Society forwarded a copy of Mr. Schleifenbaum's December 16, 1993 letter to the Solicitor and requested that he provide his comments within two weeks.

14. By telephone, on February 16, 1994 and February 23, 1994, the Solicitor asked for the Law Society's patience for his response to Mr. Schleifenbaum's complaint. Copies of the Law Society's handwritten notes are contained in the Document Book, Tab 7.

15. By letter dated March 2, 1994 (Document Book, Tab 8), the Solicitor provided the Law Society with a chronology of his service for Mr. Schleifenbaum.

16. By letter dated March 9, 1994 (Document Book, Tab 9), Mr. Schleifenbaum advised the Law Society of the Solicitor's failure to release his file despite his requests.

17. By letter dated March 16, 1994 (Document Book, Tab 10), Mr. Schleifenbaum responded to the Solicitor's March 2, 1994 letter. Mr. Schleifenbaum expressed his concerns with the Solicitor's representation of his matter, as well as the Solicitor's failure to release his file to him.

18. By letter, dated April 27, 1994 (Document Book, Tab 11), the Law Society forwarded to the Solicitor a copy of Mr. Schleifenbaum's March 9, 1994 and March 16, 1994 letters. The Solicitor was requested to provide his further comments.

19. By letter dated May 19, 1994 (Document Book, Tab 12), the Solicitor advised that he had claimed a Solicitor's Lien over the file, however, he was in dialogue with Mr. Schleifenbaum's new counsel, Mr. Bishop, in that regard.

20. By letter dated August 16, 1994 (Document Book, Tab 13), Mr. Schleifenbaum advised the Law Society of his instructions to Mr. Bishop, respecting payment of the Solicitor's account.

21. By letter, dated October 6, 1994 (Document Book, Tab 14), the Law Society forwarded to the Solicitor a copy of Mr. Schleifenbaum's August 16, 1994 letter. The Solicitor was requested to provide his comments. No reply was received.

22. A Law Society staff employee left telephone messages for the Solicitor at his office on December 5, 1994 and December 6, 1994. The Solicitor returned the Law Society's call on December 8, 1995. He advised that he had met with Mr. Schleifenbaum's counsel to arrange for the transfer of the file on December 12, 1994 and that the Law Society could expect his response by December 16, 1994. No reply was received. A copy of the Law Society's handwritten notes are contained in the Document Book, Tab 15.

23. A Law Society staff employee left telephone messages for the Solicitor at his office on January 10, 1995 and January 11, 1995 requesting that he return the calls. The Solicitor did not reply to these requests. A copy of the Law Society's handwritten notes are contained in the Document Book, Tab 16.

24. By registered mail, dated January 26, 1995 (Document Book, Tab 17), the Law Society forwarded to the Solicitor a copy of its October 6, 1994 letter. The Solicitor was reminded the Solicitor of his obligation to respond promptly to all communications from the Law Society. The Solicitor was advised that should he fail to provide the Law Society with a written response within seven days, the matter would be referred to the Discipline Committee. The Law Society's January 26, 1995 letter was signed for and delivered on February 20, 1995. No reply has been received.

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25. The Solicitor has not requested an extension to reply nor has he provided the Law Society with an explanation for his failure to reply.

Complaint D163/95
Particular 2(a)
Failure to co-operate with a Law Society representative

26. A Law Society examiner attended at the Solicitor's home/office on February 8, 1995 to conduct an audit of the books and records of his practice. The door was not answered. A copy of the Law Society's notes are contained in the Document Book, Tab 18.

27. A Law Society staff employee left a telephone message for the Solicitor. on February 8, 1995, on his office answering machine requesting he return the call. A copy of the Law Society's handwritten notes are contained in the Document Book, Tab 19. The call was not returned.

28. The Law Society examiner left a telephone message for the Solicitor, on February 8, 1995, on his office answering machine. The examiner advised the Solicitor that an audit of the books and records of his practice had been instructed and that she had attended at his office earlier that day. The examiner requested the Solicitor contact her, by telephone, to arrange a mutually convenient time for the examination to take place. A copy of the Law Society's handwritten notes, dated February 8, 1995, are contained in the Document Book, Tab 20. The call was not returned.

29. By registered and ordinary mail, dated February 9, 1995 (Document Book, Tab 21), the Law Society advised the Solicitor that an audit of his books and records had been instructed. The Solicitor was requested to contact the Law Society prior to February 23, 1995 to arrange a date on which the audit could take place. The Law Society's February 9, 1995 registered letter was signed for and delivered on February 20, 1995. No reply was received.

30. By letter dated February 23, 1995 sent by registered and ordinary mail (Document Book, Tab 22), the Law Society forwarded to the Solicitor a copy of its February 9, 1995 letter. The Solicitor was requested to give this matter his early attention. The Law Society's February 23, 1995 letter was signed for and delivered on March 24, 1995. No reply was received.

31. By letter dated March 10, 1995 sent by registered and ordinary mail (Document Book, Tab 23), the Law Society forwarded to the Solicitor a copy of its February 9, 1995 and February 23, 1995 letters. 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 the Discipline Committee. The Law Society's March 10, 1995 letter was signed for and delivered on March 24, 1995. No reply was received.

32. The Solicitor has not requested an extension to reply nor has he provided the Law Society with an explanation for his failure to reply.

V. DISCIPLINE HISTORY

33. The Solicitor was found guilty of professional misconduct and reprimanded in committee on March 17, 1992 with respect to his failure to file for the fiscal year ended February 2, 1990.

34. On November 10, 1993, the Solicitor was found guilty of professional misconduct, reprimanded in committee and ordered to pay costs of \$750.00 with respect to his failure to reply to the Law Society.

DATED at Toronto this 29th day of August, 1995."

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RECOMMENDATION AS TO PENALTY

The Committee accepted the joint submission that Robert Marven Syer be reprimanded in Convocation together with the following conditions:

1. The Solicitor continue a course of therapy with Dr. Joshua Brodey.
2. Dr. Brodey provide the Law Society with a report every two months respecting the Solicitor's continued course of treatment.
3. The reports continue until Dr. Brodey indicates that it is appropriate for the Solicitor to terminate the course of treatment.
4. The Solicitor enter into and cooperate with the Practice Review Programme.
5. The Solicitor implement suggestions made by the practice reviewer of the Practice Review Programme.
6. The Solicitor pay the Society's cost in the amount of \$700.00, payable at a rate of \$100.00 per month commencing on a date to be fixed by Convocation.

Note: Amendment, see page 8

REASONS FOR RECOMMENDATION

The Solicitor, on March 17, 1992 was found guilty of professional misconduct and reprimanded in Committee with respect to his failure to file for the fiscal year ended February 2, 1990.

On November 10, 1993, the Solicitor was found guilty of professional misconduct and again reprimanded in Committee and ordered to pay costs of \$750.00 with respect to his failure to reply to the Law Society.

The third time around, the Committee was satisfied that a suspension might well be appropriate but for various mitigating circumstances herein, particularly the psychiatric report of Dr. D. Posen dated August 15, 1995.

Pursuant to the medical report, it appears that the Solicitor is suffering from depression and has entered into a course of therapy. He has been referred to a psychiatrist, Dr. Joshua Brodey, to help in assisting Mr. Syer through his unfortunate circumstances. Dr. Brodey apparently has continued his course of therapy even up to the present time, and as a result, one of the terms of the recommended penalty is that reports are given to the Law Society approximately every two months in regard to the Solicitor's medical condition. Hopefully Dr. Brodey will assist the Solicitor in that regard by satisfying the Society that the Solicitor is getting what is necessary to assist him in his day to day endeavours.

The Law Society has indicated that there is absolutely no evidence of dishonesty before us.

The Solicitor has also, by way of mitigation, fulfilled all of his obligations in regard to reporting, any information that the Society has required has been supplied, and the Solicitor has assisted in the investigation to satisfy the Society in regard to the problems that he has had.

The Committee's view is that the situation might well be different if there were any other problems encountered by the Solicitor.

Ordinarily, this Committee would have recommended a reprimand in Committee. However, because of the prior two occasions where the same was done, and considering that the same problem occurred, it is recommended that a reprimand in Convocation take place.

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Robert Marven Syer was called to the Bar on the 19th day of March, 1970.

ALL OF WHICH is respectfully submitted

DATED this 14th day of November, 1995

Gerald A. Swaye, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Committee was that the solicitor be reprimanded in Convocation with the conditions set out in the Report.

Both counsel supported the recommended penalty with a request for an amendment to condition 4. by adding the words "upon reinstatement" to the beginning of paragraph 4. and that paragraphs 4. and 5. be combined.

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

Carried

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Re: Bruce Allan CLARK - Ottawa

The Secretary placed the matter before Convocation.

Mr. Strosberg withdrew for this matter.

Mr. Scott did not participate.

Mr. Michael Brown appeared for the Society and the solicitor was present by telephone.

Mr. Brown advised that Mr. Clark requested an adjournment as he wished to appeal the Order of Convocation dated November 23, 1995.

Mr. Brown opposed the adjournment. He advised that Convocation had two options: (1) adjourn the matter sine die until the disposition of the appeal by the courts or (2) suspend the solicitor and allow the Divisional Court to stay the suspension if appropriate.

The solicitor made submissions in support of the adjournment.

The Treasurer advised the solicitor that Convocation would deliberate in camera and would telephone him with their decision.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Swaye but failed for want of seconder that the solicitor be suspended.

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It was moved by Mr. Topp, seconded by Mr. Wilson that the adjournment be granted and that the matter be brought back on 30 days notice by either party.

Carried

Counsel, the reporter and the public were recalled, the solicitor contacted by telephone and were informed of Convocation's decision to grant the adjournment and that the matter be brought back within 30 days notice by either party.

Counsel retired.

Re: Howard Elliott KERBEL - Toronto

The Secretary placed the matter before Convocation.

Ms. Sachs, Ms. O'Connor and Mr. Strosberg withdrew for this matter.

Mr. Perrier appeared on behalf of the Society and Mr. Brian Greenspan appeared for the solicitor. The solicitor was not present.

Mr. Perrier requested an adjournment on consent to the next Discipline Convocation in February. He advised that there had been a death in Mr. Greenspan's family.

Mr. Greenspan added that the solicitor was not practising.

It was moved by Mr. Crowe, seconded by Ms. Carpenter-Gunn that the adjournment be granted to the next Convocation Assignment Tribunal in February.

Carried

Counsel retired.

Re: Lee Edward FINGOLD - Thornhill

The Secretary placed the matter before Convocation.

Ms. Harvey withdrew for this matter.

Mr. Scott did not participate.

Ms. Janet Brooks appeared for the Society and Mr. Greenspan appeared for the solicitor. The solicitor was not present.

Convocation had before it the Report of the Discipline Committee dated 24th November, 1995, together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 29th November, 1995 (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

Daniel J. Murphy, Chair
Jane Harvey
Nora Angeles

25th January, 1996

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

Janet Brooks
for the Society

LEE EDWARD FINGOLD
of the Town
of Thornhill
a barrister and solicitor

Brian Greenspan
for the solciitor

Heard: October 30, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 21, 1994, Complaint D424/94 was issued against Lee Edward Fingold alleging that he was guilty of professional misconduct.

The matter was heard in public on October 30, 1995 before this Committee composed of Daniel J. Murphy, Chair, Jane Harvey and Nora Angeles. The Solicitor was not present at the hearing. He was represented by Brian Greenspan. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D424/94

- 2. a) On eight separate occasions in the period July 1988 to February 1990, he misappropriated for short periods of time, a total of \$83,821.24 that belonged to his client, the estate of John Mason. Particulars of the misappropriations are as follows:

<u>Borrower</u>	<u>Amount</u>	<u>Approximate Date of Loan</u>	<u>Approximate DatofRepayment</u>
R. Kramer in trust	\$9,287.72	July 26/88	August 2/88
C. Pierrozi	10,000.00	July 27/89	August 11/89
Kreb Holdings	9,533.52	August 3/89	August 11/89
Fine Mention Mtgs.	20,000.00	Sept. 22/89	Oct. 5/89
Huckachine Inc.	2,000.00	Oct. 13/89	Dec. 29/89
Huckachine Inc.	13,000.00	Oct. 16/89	Dec. 29/89
Fine Mention Mtgs.	15,000.00	Oct. 25/89	Dec. 29/89
Philis Harvie	5,000.00	Feb. 2/90	May 14/90
	<u>\$83,821.24</u>		

- b) In the period June 1988 to August 1989, he breached the requirements of Rules 5 and 7 of the Rules of Professional Conduct when he borrowed funds in excess of \$1,000,000 from a number of clients of his law practice for investment in real estate investments in which he had an interest. The particulars of such borrowings are as follows:

<u>Approximate</u> <u>Date of Loan</u>	<u>Client</u> <u>Amount</u>	
June 3/88	Martin J. Lubotta	\$ 50,000.00
August 16/88	Dr. Michael Bederman	170,000.00
August 16/88	Tim and Nina McPhail	30,000.00
January 4/89	Pierrozi/Bellemore	50,000.00
February 6/89	A.J.F. Family Trust	250,000.00
March 3/89	Miriam and Lorne Lubotta	100,000.00
March 6/89	Carlo Pierrozi	50,000.00
August 4/89	A.J.F. Family Trust	420,500.00
August 11/89	A.J.F. Family Trust	209,000.00
		<u>\$1,329,500.00</u>

- c) On or about July 12th 1989, he swore a false Form 2 statutory declaration by declaring that he was not indebted to clients either directly or indirectly, when in fact he was so indebted.
- d) On or about March 3rd 1989, he failed to ensure that his client, Dr. Michael Bederman, obtain independent legal advice when Dr. Bederman invested \$357,000.00 in real estate at 2365 - 2371 Queen Street East, Toronto a property in which the Solicitor had an interest, contrary to the requirements of Rule 5 paragraph 8 of the Rules of Professional Conduct.
- e) In 1989 he personally guaranteed three mortgages in which clients were involved as borrowers or lenders contrary to Rule 23 of the Rules of Professional Conduct. Particulars of the mortgages are as follows:

<u>Approximate</u> <u>Date</u>	<u>Client</u>	<u>Amount of Mortgage</u>
January 20/89	Lucy Carpman	\$75,000.00
February 6/89	A.J.F. Family Trust	250,000.00
October 27/89	Paul Oberst	16,500.00

- f) On or about January 20th 1989, he preferred his own interests and those of his clients, Claudia Doret and Nick Notarangelo, to the interests of Lucy Carpman by misleading Ms. Carpman as to the purpose of the investment, when he persuaded her to invest \$74,500.00 in a 3rd mortgage on 85 Kendal Avenue, Toronto.

Evidence

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

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"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D424/94 and is prepared to proceed with a hearing of this matter on October 30, 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 D424/94 and this agreed statement of facts with his counsel, Brian Greenspan, 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 is 45 years of age. He was called to the Bar on March 26, 1977. The Solicitor gave an Undertaking not to practice on July 19, 1995, a copy of which is attached as Exhibit 1 to this agreed statement of facts.

Particular 2(a) Estate of John Mason - Misappropriation \$83,821.24

5. The Solicitor acted as the executor and solicitor of the estate of John Mason. Mr. Mason died on June 4, 1988. Letters probate in regard to the estate were issued on August 22, 1988. A copy of the letters probate and the will are attached collectively as Exhibit 2 to this agreed statement of facts.

6. By letter dated July 20, 1989, one of the beneficiaries, Christine Mason, wrote a letter of complaint to the Society. The Solicitor replied and on September 11, 1989 wrote to the beneficiaries enclosing an estate accounting, a copy of which is attached as Exhibit 3 to this agreed statement of facts.

7. The Solicitor prepared an application to pass the accounts of the estate, a copy of which is attached as Exhibit 4 to this agreed statement of facts. The statement of accounts revealed investments in a number of mortgages. The beneficiary accepted the accounting and waived the requirement of a passing of accounts.

8. An examination of the estate file and accounting records revealed that the Solicitor had used estate funds as a source of funding for his mortgage brokering practice.

9. The Solicitor benefitted from these mortgage investments through the payment of brokerage and legal fees. His fees on each of the six transactions ranged from \$500.00 to \$1,500.00 per transaction.

10. In addition, the Solicitor improperly transferred funds from the estate in respect of the following transactions, the details of which are set out in paragraphs 11 to 18 below:

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<u>Date of loan</u>	<u>Borrower</u>	<u>Amount</u>	<u>Date repaid</u>
July 26/88	R. Kramer in trust	\$ 9,287.72	August 2/88
July 27/89	C. Pierrozi	10,000.00	August 11/89
August 3/89	Kreb Holdings	9,533.52	August 11/89
Sept. 22/89	Fine Mention Mtgs.	20,000.00	Oct. 5/89
Oct. 13/89	Huckachine Inc.	2,000.00	Dec. 29/89
Oct. 16/89	Huckachine Inc.	13,000.00	Dec. 29/89
Oct. 25/89	Fine Mention Mtgs.	15,000.00	Dec. 29/89
Feb. 2/90	Philis Harvie	<u>5,000.00</u>	May 14/90
		<u>\$83,821.24</u>	

R. Kramer in Trust - \$9,287.72

11. The Solicitor used the \$9,287.72 as part of a deposit on the purchase of a property at 199 Collard Drive, King City, being purchased by himself in partnership with two other clients.

12. The Solicitor repaid the funds after five days. The Solicitor gave as the reason for using the estate funds in this manner that it was easier than going to the bank and filling in the paper work for a loan. Attached as Exhibit 5 to this agreed statement of facts is a copy of the Solicitor's hand written acknowledgement of receipt of the funds from the estate.

C. Pierrozi - \$10,000.00

13. This amount was paid to Carlo Pierrozi as partial repayment of a \$50,000.00 personal loan made by Mr. Pierrozi's company to the Solicitor in March of 1989 in connection with the Solicitor's investment in a property at 2365-2371 Queen Street East, Toronto.

Kreb Holdings - \$9,533.52

14. These funds represented the outstanding interest and legal fees due to Owens, O'Donahue and Wright to discharge a \$420,500.00 mortgage from Kreb Holdings Ltd. that was being refinanced. The Solicitor had a 22 percent interest in the 20 acres of land in East Gwillimbury that the company had purchased in September 1988 and which were the subject of the mortgage. Attached as Exhibit 6 to this agreed statement of facts is a copy of the covering letter which refers to the \$9,533.52 cheque.

Fine Mention Mtgs. - \$20,000.00

15. The \$20,000.00 advance to Fine Mention Mtgs. was in connection with a mortgage for \$35,000.00 on 206 Earls court Avenue, Toronto from Robert Kramer in trust to Lewis Smith. Mr. Smith was the Solicitor's grandfather and the Solicitor had a one third interest in this property. An agreement to sell the property was executed on September 12, 1989. The \$20,000.00 was paid to Fine Mention Mtgs., the Solicitor's mortgage broking company. The estate was repaid out of the sale proceeds.

Huckachine Inc. - \$2,000.00 and \$13,000.00

16. Huckachine Inc. is a corporation wholly owned and controlled by the Solicitor. Two payments totalling \$15,000.00 were used by Huckachine to purchase Hay Welton's remaining interest in the 20 acre parcel in East Gwillimbury owned by Kreb Holdings referred to in paragraph 14 above.

Fine Mention Mtgs. - \$15,000.00

17. The \$15,000 advance to Fine Mention Mtgs. was in connection with a September 8, 1989 mortgage investment in the property of the Solicitor's clients Jack Witte and Deborah Lucas at 75 Courcelette Road, Scarborough. The estate was later repaid on December 29, 1989.

Philis Harvie - \$5,000.00

18. \$5,000.00 was advanced to Philis Harvie in connection with a retainer agreement she signed on February 3, 1990, a copy of which is attached as Exhibit 7 to this agreed statement of facts. The Solicitor admitted to the Society's auditor that some of the \$5,000.00 paid to Philis Harvie was paid to him as a retainer for legal services.

Particular 2(b) Conflict of Interest, Rule 5 and Borrowing from Clients, Rule 7 - \$1,000,000.00 More or Less

19. The Solicitor's borrowing from clients took place in the context of investments in real estate in which he had an interest.

20. During the period June 1988 to March 1989, the Solicitor together with two clients, Robert Kramer and Haywood Welton, speculated in real estate. Generally, either Kramer or Welton would find the properties then the Solicitor would arrange the financing. Attached as Exhibit 8 to this agreed statement of facts is a copy of the partnership agreement between the Solicitor and Messrs. Kramer and Kim Joe who was Mr. Welton's representative in the partnership.

21. The agreement set out the current assets of the partnership as being as follows:

- 206 EarlsCourt Avenue, Toronto
- 199 Collard Drive, King City
- 69 King Georges Avenue, Toronto
- Part Lot 9 and 10, Concession 4, Town of East Gwillimbury

22. In a letter dated May 10, 1990, the Solicitor provided the Law Society with explanations for some of his indebtedness to clients, a copy of this letter is attached as Exhibit 9 to this agreed statement of facts.

199 Collard Drive, King City

23. The Solicitor borrowed from the following clients in regard to this property:

August 16/88	Dr. Michael Bederman	-	\$170,000.00
August 16/88	Tim and Nina McPhail	-	30,000.00
Feb. 6/89	A.J.F. Family Trust	-	250,000.00

24. 199 Collard Drive was purchased on August 16, 1988 for \$1,130,000.00. Title to the property was taken in the name of Robert Kramer. The purchase was 100 percent financed.

25. On closing, the following mortgages were registered:

1st	Home Savings & Loan Corporation	\$	750,000.00
2nd	Dr. Michael Bederman		170,000.00
3rd	584628 Ontario Inc. (vendedor)		160,000.00
4th	McPhail/Himel/Fingold		<u>60,000.00</u>
			<u>\$1,140,000.00</u>

26. The Solicitor acted for Robert Kramer and the first, second, and fourth mortgagees. Mrs. Himel is the Solicitor's mother. It is the Solicitor's position that Home Savings and Loan Corporation, Dr. Michael Bederman and Mr. and Mrs. McPhail knew that he had an interest in the property. The Solicitor does not deny that he did not personally disclose this fact to them either in his reporting letters or otherwise.

27. Dr. Bederman and Mrs. McPhail were not told to nor did they obtain independent legal representation or advice.

28. On January 28, 1989, Mr. Kramer released his partnership interest in 199 Collard Drive and on February 1, 1989 the property was transferred from Robert Kramer's name to Huckachine Inc. The Solicitor prepared an Affidavit dated January 24, 1985 stating that Robert Kramer was a bare trustee and that Huckachine Inc. had been the beneficial owner of the property since August 1988. A copy of the transfer deed registered February 1, 1989 and the affidavit prepared by the Solicitor are attached collectively as Exhibit 10 to this agreed statement of facts.

29. The second, third and fourth mortgages were discharged in February 1989 when the property was refinanced. Attached collectively as Exhibit 11 to this agreed statement of facts are the reporting letters from the Solicitor to Dr. Bederman, Robert Kramer and Mr. and Mrs. McPhail.

30. The February 6, 1989 refinancing of the property was obtained by way of a \$250,000.00 grant from A.J.F Family Trust which was secured by a second mortgage on the property and a \$250,000.00 third mortgage obtained from Jill Kamin in trust.

31. A.J.F. Family Trust was and still is a client of the Solicitor's law practice. Murray J. Hart of Lily, Goldman acted for A.J.F. Family Trust in the transaction. There is no solicitor/client relationship between Jill Kamin and the Solicitor.

32. The existing second, third and fourth mortgages were discharged and the surplus funds deposited into a bank account in the name of "3 Amigos". The beneficiaries of this account were the Solicitor, his client Welton and his client Kramer. The Solicitor had sole signing authority over this account.

33. The Solicitor personally guaranteed the \$250,000.00 second mortgage to A.J.F. Family Trust. A copy of the mortgage is attached as Exhibit 12 to this agreed statement of facts.

34. The first mortgage of \$750,000.00 went into default and a power of sale notice was issued in June, 1989. The property was subsequently sold for \$832,000.00 and the second and third mortgagees lost all of their funds. The Solicitor was not able to honour his guarantee to A.J.F. Family Trust.

35. The Solicitor admits that the circumstances of the A.J.F. refinancing were in breach of the Rules of Professional Conduct in that the personal guarantee violated the provisions of Rule 23, Commentary 6a and the loans from Biderman, McPhail and A.J.F. violated the provisions of Rule 7 paragraph 2.

20 Acres in East Gwillimbury - Part Lot 10, Concession 4

36. Borrowing from clients and conflict of interest are alleged regarding the following of the Solicitor's clients:

June 3/88	Martin J. Lubotta	-	\$ 50,000.00
January 4/89	Pierrozi/Bellemore	-	50,000.00
August 4/89	A.J.F. Family Trust	-	420,500.00
August 11/89	A.J.F. Family Trust	-	209,000.00

25th January, 1996

37. This property was purchased for 1.6 million dollars on September 12, 1988 with 100 percent financing. Title to the property was registered in the name of Kreb Holdings Ltd., a corporation wholly owned by Robert Kramer. The company held 22 percent of the 20 acres in trust for the Solicitor.

38. The Agreement of Purchase and Sale was executed on June 1, 1988. The Agreement required a deposit of \$50,000.00 which the Solicitor borrowed from his client, Martin J. Lubotta. The loan was repayable in the amount of \$65,000.00 if the transaction closed and at a rate of 15 percent if the transaction did not close. Attached as Exhibit 13 to this agreed statement of facts is a letter dated June 3, 1988 from the Solicitor to Martin Lubotta setting out the terms and conditions of the loan. Attached as Exhibit 14 to this agreed statement of facts is a letter dated June 3, 1988 from Mr. Lubotta to the Solicitor covering a cheque for \$50,000.00. The handwritten notations on the cheque are those of the Solicitor. These handwritten notes constitute a promissory note.

39. The transaction closed on September 12, 1988 and Mr. Lubotta's loan was repaid in full.

40. On closing, the following mortgages were registered on title:

1st	Aldelaur Enterprises - assumed	\$277,244.91
2nd	K.C. and J.T.Lai in trust - vendors	850,000.00
3rd	Shareholders Investment Corp. Ltd.	420,500.00
4th	Peter D'Ammizio et al - see below	<u>900,000.00</u>
		<u>\$2,447,244.91</u>

41. The names of the investors in the fourth mortgage and the amount of their investments are set out below:

	<u>Mortgage</u>	<u>Investment</u>
Peter D'Ammizio	\$ 50,000.00	\$ 50,000.00
Tibi Raynai	50,000.00	50,000.00
Evlar Investments Limited (Mr. Fingold's mother's company)	150,000.00	75,000.00
Dr. Michael Bederman	50,000.00	50,000.00
748203 Ontario Limited (Welton)	200,000.00	
Huckachine Inc. (Fingold)	200,000.00	
Robert Kramer	<u>200,000.00</u>	
	<u>\$900,000.00</u>	<u>\$225,000.00</u>

42. The Solicitor admitted to the auditor that Peter D'Ammizio, Tibi Raynai and Dr. Bederman were clients of his practice. The Solicitor also told the auditor that the additional amounts of \$200,000.00 were put in the mortgage to prevent Messrs. Welton and Kramer from putting other mortgages on title. He did not trust them completely. Evlar Investments Ltd. only advanced \$75,000.00 as the Solicitor already owed his mother (the principal of Evlar) \$75,000.00 on an unrelated matter. Copies of the Statement of Adjustments and accounting on this transaction are attached collectively as Exhibit 15 of this agreed statement of facts.

43. The accounting shows that \$60,000.00 of the funds received for the closing were paid to Huckachine Inc. The Solicitor indicated that this transfer of funds was made to repay himself for funds he had put into 69 King Georges Avenue, Toronto, another joint venture with Messrs. Welton and Kramer.

44. The accounting records show only \$175,000.00 being received in total from the investors in the fourth mortgage. This is in part because Mr. Bederman's \$50,000.00 was not received until September 20, 1988 on which date it was paid to Kreb Holdings Ltd. Mr. Bederman did not receive independent legal advice for this advance.

45. On January 4, 1989, the Solicitor received \$50,000.00 from Carlo Pierrozi and Teresa Bellemore, these funds were paid to Robert Kramer Enterprises. Mr. Kramer was supposed to use these funds as a deposit on another property but did not and the Solicitor, in order to make restitution, arranged a fifth mortgage for \$65,000.00 from Robert Kramer secured on the 20 acres in East Gwillimbury. A copy of a trust cheque for \$50,000.00 payable to Robert Kramer is attached as Exhibit 16 to this agreed statement of facts. A copy of a promissory note from Robert Kramer to Pierrozi/Bellemore dated January 4, 1989 is attached as Exhibit 17 to this agreed statement of facts. A mortgage for \$65,000.00 from Kreb Holdings to Carlo Pierrozi and Teresa Bellemore registered on February 13, 1989 is attached as Exhibit 18 to this agreed statement of facts. Finally, the Solicitor's reporting letter to Pierrozi/Bellemore is attached as Exhibit 19 to this agreed statement of facts.

46. On June 12, 1989, an Agreement of Purchase and Sale was executed for the sale of the 20 acres to Fairpoint Corporation for 2.75 million dollars. The transaction was to close on November 15, 1989. On or about August 4, 1989, A.J.F. Family Trust paid \$420,500.00 to Owens, O'Donahue, Wright to discharge the existing third mortgage to Shareholders Investment Corporation Ltd. Although the Owens firm prepared the assignment of mortgage, the Solicitor acted for A.J.F. Family Trust. On August 11, 1989, A.J.F. Family Trust paid the Solicitor in trust, \$209,000.00 for a fifth mortgage on the 20 acres. These funds were disbursed as follows:

Dr. Michael Bederman	\$ 50,000.00
Carlo Pierrozi and Teresa Bellemore	57,800.00
714233 Ontario Inc. (Mr. Fingold)	<u>101,200.00</u>
	<u>\$209,000.00</u>

47. Neither of the borrowing from A.J.F. Family Trust complied with paragraph 2 of Rule 7 of the Rules of Professional Conduct.

48. In October 1989, 830889 Ontario Limited sold the shares it had purchased from Kreb Holdings in May of 1989 to Huckachine Inc.

49. The sale of the 20 acres to Fairpoint Corporation did not take place. The Solicitor was not able to sell the land to anyone else and eventually transferred the title of the property to his trustee in bankruptcy. The property was subsequently sold for \$900,000.00. A.J.F. lost its total investment in both the third and fifth mortgages.

2365 - 2371 Queen Street East, Toronto

50. This property involves borrowing from clients and conflicts of interest regarding the following clients:

March 3/89	Miriam and Lorne Lubotta	-	\$100,000.00
March 6/89	Carlo Pierrozi	-	50,000.00

51. This property was purchased for \$3,350,000.00 on March 3, 1989 with almost 100 percent financing. The property was registered in the name of 819166 Ontario Inc. The shares of 819166 Ontario Inc. were held equally by Mr. Welton, the Solicitor and Dr. Bederman.

52. The property consisted of two adjacent lots, 50 feet by 132 feet that were in the process of being developed for two, four storey mixed use condominiums. The vendor had obtained site plan approval, a development agreement and a building permit from the City of Toronto. The existing buildings had been demolished but the plans for the mixed use condominium had not yet been approved.

53. On closing, the following mortgages were registered on title:

1st	Shoppers Mortgage and Loan Corporation	\$2,250,000.00
2nd	Granville Savings and Mortgage Corp.	560,000.00
3rd	Fingold/Bederman	<u>563,000.00</u>
		<u>\$2,373,000.00</u>

54. The source of the funds used to purchase these properties was as follows:

Shoppers Mortgage		\$2,240,161.78
Granville Savings		500,000.00
Dr. Michael Bederman	357,000.00	
Miriam and Lorne Lubotta	100,000.00	
Huckachine Inc. (E. Fingold)	<u>100,000.00</u>	<u>557,000.00</u>
		<u>\$3,297,161.78</u>

55. In making the loan arrangements with Mr. Lubotta, the Solicitor agreed to repay Mr. Lubotta \$120,000.00 after an expected flip of the property between 35 to 40 days after the advance of the funds.

56. In the Solicitor's statement of affairs in his bankruptcy, he indicated that he owed Mr. Pierrozi \$40,000.00.

57. Dr. Bederman provided \$357,000.00 of the funds to purchase these properties. Dr. Bederman is currently suing the Solicitor for \$1,000,000.00 in connection with this transaction. A copy of the Statement of Claim is attached as Exhibit 20 to this agreed statement of facts.

58. The property was sold under power of sale in January 1990 for 2.7 million dollars. There was a deficiency of over \$500,000.00 on the second mortgage. Granville commenced an action which was settled by the Lawyers' Professional Indemnity Company for the full value of the claim.

Admissions

59. The Solicitor admits that the borrowing from Mr. Lubotta and Mr. Pierrozi violated the provisions of paragraph 2 of Rule 7 of the Rules of Professional Conduct.

60. The Solicitor admits that in respect of Dr. Bederman's investment, the Solicitor breached the provisions of Rule 5 of the Rules of Professional Conduct by failing to ensure that Dr. Bederman received independent legal advice regarding the transaction as is required.

Particular 2(e) Mortgage Guarantees

61. The Solicitor personally guaranteed mortgages in which clients were involved as borrowers or lenders contrary to Rule 23 of the Rules of Professional Conduct in regard to the following clients:

- Lucy Carpman
- Paul Oberst
- A.J.F. Family Trust

Lucy Carpman - \$75,000.00

62. The Solicitor first acted for Lucy Carpman on a wrongful dismissal action during which time she advised him she needed to sell her condominium at 65 Harbour Square. The Solicitor expressed an interest in buying the unit and on October 28, 1988, an Agreement of Purchase and Sale was executed by Robert Kramer in trust to purchase the condominium for \$210,000.00. The transaction closed on December 1, 1988 with title being taken in the name of Hideway Holdings Inc. The Solicitor had a financial interest in this company together with James Bates (a mortgage broker), Robert Kramer and Haywood Welton.

63. On closing Lucy Carpman received a cheque for \$209,433.12. A copy of the Solicitor's reporting letter to Ms. Carpman is attached as Exhibit 21 to this agreed statement of facts.

64. In January 1989, the Solicitor suggested that Ms. Carpman invest funds in a third mortgage on a property at 85 Kendal Avenue, Toronto. The property was owned by other clients of the Solicitor, Claudia Doret and Nicholas Notarangelo. The Solicitor persuaded Ms. Carpman to invest in the mortgage by advising her that the property was worth it, that he knew the clients and by agreeing to personally guarantee the mortgage. The property was being renovated and the Solicitor did have an appraisal which estimated the property to be valued at between \$570,000.00 and \$600,000.00. After Ms. Carpman's mortgage was registered, mortgages on the property totalled \$435,000.00. A copy of the appraisal is attached as Exhibit 22 to this agreed statement of facts.

65. The mortgage transaction closed on January 20, 1989. The funds were disbursed the same day as follows:

Nick Notarangelo & Claudia Doret	\$20,363.19
Hurowitz/Fingold - fees & disbursements	2,173.25
Fine Mention Mortgages - brokerage fee	1,000.00
Lebow Appraisals	350.00
Frank and Nick Notarangelo re 80 Dupont St.	44,510.45
Lee Edward Fingold re 80 Dupont St.	6,103.11
	<u>\$74,500.00</u>

66. The payments referencing 80 Dupont Street, Toronto, referred to a property that was sold one week earlier. The vendors were Frank and Nicholas Notarangelo. The Solicitor was paid \$44,510.45 of the sale proceeds. The Solicitor's position is that the \$44,510.45 and the \$6,103.11 were repayments for loans he had previously made to Nick Notarangelo. The \$44,510.45 amount represents exactly half of the net sale proceeds of 80 Dupont Street.

67. The trust ledger accounts for the Doret/Notarangelo purchase of 85 Kendal Avenue show that it was purchased on October 11, 1988 for \$425,000.00 and that \$17,500.00 of the purchase price had been loaned by Huckachine Inc., the Solicitor's corporation.

68. The second and third mortgages on 85 Kendal Avenue went into default in May of 1989 and the Solicitor issued a power of sale notice on behalf of the second mortgagee, A.J.F. Family Trust. The property was sold for \$475,000.00. Lucy Carpman only consented to the assumption of her mortgage on the sale of the property in July of 1989 on the condition that new guarantees be signed by the Solicitor. The new owner subsequently defaulted.

69. Attached as Exhibits to this agreed statement of fact are the following documents:

- Exhibit 23 - The Solicitor's reporting letter to Lucy Carpman dated January 23, 1989 containing the Solicitor's handwritten guarantee of the mortgage;

25th January, 1996

- Exhibit 24 - The trust ledger account for the Carpman mortgage advance; and
- Exhibit 25 - The Solicitor's guarantee to Lucy Carpman signed July 6, 1989.

Paul Oberst - \$16,500

70. In October, 1989, the Solicitor acted for Mr. Oberst on a \$16,500.00 loan to other clients of his, Jack Witte and Deborah Lucas, secured by a third mortgage on 75 Courcellette Road, Scarborough.

71. On October 27, 1989, the Solicitor signed a covenantor's agreement with Mr. Oberst in which he effectively guaranteed the mortgage.

72. The mortgage funds were lost but the Solicitor has made a payment to Mr. Oberst directly and there has been no errors and omissions claim. A copy of the covenantor's agreement is attached as Exhibit 26 to this agreed statement of facts.

A.J.F. Family Trust - \$250,000.00

73. The Solicitor personally guaranteed the second mortgage to A.J.F. Family Trust in regard to the 199 Collard Drive property in King City.

Particular 2(f) Preferring his own interests over those of his client, Lucy Carpman

74. In respect of the investment referred to in paragraphs 64 to 69 above, the Solicitor told Ms. Carpman that her funds would be used in order to renovate the property. The Solicitor did not advise Ms. Carpman that of her \$74,500 advance, the Solicitor would receive \$54,136.81 from Notarangelo in repayment of the Solicitor's loans and the borrowers would receive \$20,363.19. The Solicitor's explanation for not advising Ms. Carpman of his interest in her mortgage is that he did not think that it was relevant if she was making an advance on the strength of the property.

75. Ms. Carpman received a grant in the amount of \$43,544.77 from the Lawyers Fund for Client Compensation in respect of her loss.

Particular 2(c) False Statutory Declaration

76. On or about July 12, 1989, the Solicitor swore a false Form 2 Statutory Declaration in which he stated he was not indebted to clients when in fact at that date he was. A copy of the Declaration is attached as Exhibit 27 to this Agreed Statement of Facts.

V. DISCIPLINE HISTORY

77. The Solicitor does not have a prior discipline record.

VI. PENALTY

78. The Solicitor does not oppose the Law Society's position that it is appropriate that his membership be terminated by way of disbarment.

DATED at Toronto, this 26th day of October, 1995."

25th January, 1996

RECOMMENDATION AS TO PENALTY

The Committee recommends that Lee Edward Fingold be disbarred.

REASONS FOR RECOMMENDATION

The general role in misappropriation cases is that except in some unusual circumstances, disbarment is required. Not only does the Committee find an absence of circumstances that would mitigate against disbarment, the same was not urged upon us by Counsel for the Solicitor and there is a joint submission on penalty.

It is clear from the Agreed Statement of Facts that the Solicitor was a mortgage broker and land speculator with clients and other business associates. He improperly appropriated his clients' funds for his own use. The funds in some cases were substantial - over \$80,000 from the Estate of John Mason. In addition he borrowed substantial money from clients (in one case over \$1,000,000.00) without seeing that the client received independent legal advice. The Solicitor is now bankrupt and there are substantial losses.

Mr. Fingold is not the typical candidate for disbarment. He is 45 years of age and has no prior discipline record. Nevertheless disbarment is clearly the only appropriate penalty and the Solicitor has consented to such a recommendation.

Lee Edward Fingold was called to the Bar on the 29th day of March, 1977.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

Daniel J. Murphy
Chair

There were no submissions and the Report was voted on and adopted.

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

Both counsel made brief submissions in support of the recommended penalty and advised that the solicitor consented to the disbarment.

It was moved by Mr. MacKenzie, seconded by Mr. Armstrong that the solicitor be disbarred.

Carried

Counsel retired.

Re: Brian Francis ADAMSON - Minden

The Secretary placed the matter before Convocation.

Ms. Backhouse, Ms. Ross and Mr. Topp withdrew for this matter.

Mr. Scott did not participate.

25th January, 1996

Ms. Elizabeth Cowie appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

Convocation had before it the Report of the Discipline Committee dated 5th December, 1995, together with an Affidavit of Service sworn 5th January, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 14th December, 1995 (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

Nancy Backhouse, Chair
Larry Banack
Heather Ross

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

Elizabeth Cowie
for the Society

BRIAN FRANCIS ADAMSON
of the Township
of Minden
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 1, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 29, 1995 Complaint D41/95 was issued against Brian Francis Adamson alleging that he was guilty of professional misconduct.

The matter was heard in public on November 1, 1995 before this Committee comprising Nancy Backhouse, Chair, Larry Banack and Heather Ross. The Solicitor did not attend the hearing, nor was he represented. Elizabeth Cowie appeared on behalf of the Law Society.

DECISION

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

Complaint D41/95

2. a) He failed to serve his clients, Ray and Marjorie Usher, in a conscientious, diligent and efficient manner in that:

25th January, 1996

- i) he failed to keep them reasonably informed as to the progress of obtaining statutory declarations and an up-to-date survey relating to their real estate transaction;
 - ii) He failed to answer their reasonable requests for information through their new solicitor;
- b) he failed to reply to the Law Society regarding a complaint by Ray and Marjorie Usher, despite letters dated September 20, 1994 and November 3, 1994 and telephone messages left on October 11, 1994, October 14, 1994 and October 17, 1994 and a telephone conversation with the Solicitor on October 18, 1994; and
- c) he failed to reply to the Law Society regarding a complaint by William Beatty despite letters dated November 4, 1994 and December 5, 1994 and telephone messages left on November 30, 1994 and December 2, 1994.

FINDING OF COMMITTEE

Service

The Law Society filed a service brief containing the complaint and five letters sent to the Solicitor, to which no responses were provided.

Letters dated July 11, 1995 and September 18, 1995 contained the confirmation of discussions with the Solicitor confirming that the complaint would proceed.

Further, the service brief contained an Affidavit of Service in proper form.

The Committee concluded, that service had been effected upon the Solicitor, that he had notice of the proceedings, and that it was appropriate to proceed in his absence.

Evidence

The counsel for the Law Society then sought to file affidavits of two solicitors, pursuant to s. 33(9) of the Law Society Act, the Solicitor having been advised of the intention to proceed in his absence and provided with the draft affidavits for his information. The Solicitor did not respond.

The affidavits were accepted and filed as Exhibits 4 and 5.

On March 27, 1991, while handling a real estate transaction for the vendors, the Solicitor gave an undertaking to the lawyer for the purchaser to register a declaration on title within 30 days of closing the real estate transaction (the "Undertaking"). The sum of \$5,000 was held back by the purchaser's lawyer to be released to the purchaser if the undertaking could not be fulfilled within the 30 day time period.

25th January, 1996

The clients on whose behalf the Solicitor gave the undertaking, Raymond and Marjorie Usher, retained Stanley Fineberg in September, 1991 to determine the status of that undertaking. Mr. Fineberg wrote the Solicitor on September 18, 1991 and December 12, 1991 requesting the status of the undertaking and the \$5,000 held in escrow thereunder. The Solicitor failed to respond to either letter. By letter dated January 30, 1992, the Solicitor wrote to Mr. Fineberg indicating he had had some difficulty with respect to the survey provided pursuant to the undertaking. He indicated those difficulties would be resolved in the immediate future and that he would be forwarding documents to Mr. Fineberg's office for signature by Mr. and Mrs. Usher.

By letters dated July 13, 1993 and September 29, 1993 Mr. Fineberg requested an update from the Solicitor.

On October 6, 1993, Mr. Fineberg received a letter from the Solicitor wherein the Solicitor promised to provide a full response no later than October 13, 1993. No further communication or documentation was received from the Solicitor.

On October 5, 1994, the lawyer for the purchasers paid the \$5,000 holdback to the purchaser, with a potential loss of that amount to Raymond and Marjorie Usher, because the undertaking was not complied with by the Solicitor.

On the basis of the evidence, the Committee concluded that the Solicitor failed to serve his clients, Raymond and Marjorie Usher, in a conscientious, diligent and efficient manner in that he failed to keep them reasonably informed as to the progress of obtaining statutory declarations and an up-to-date survey relating to their real estate transactions, and he failed to answer their reasonable requests for information through their new lawyer resulting in the Ushers suffering a potential financial loss described above.

Dealing now with the particular of the complaint described at paragraph 2(b), being a failure to reply to the Law Society regarding letters and telephone messages left with the Solicitor, the Committee heard the evidence of Sylvie McAulay and Mary Beth Gilles and reviewed the letters contained in the document book marked as Exhibit 3. On the basis of the evidence and documents filed, the Committee found that the Solicitor did in fact fail to reply to the Law Society with respect to the letters and telephone messages and conversations described in paragraph 2(b) of the complaint.

With respect to paragraph 2(c) of the complaint, which alleges that the Solicitor failed to reply to Law Society communications concerning a client named William Beatty, evidence was received from Law Society employee Belinda Layefsky, and the documents identified in the document brief from tab 17 to 20. On the basis of the evidence adduced and the documents identified, the Committee found that the Solicitor failed to reply to the Law Society as set out in paragraph 2(c) of the complaint.

Based on the evidence heard by this Committee, it is our conclusion that the Solicitor is guilty of professional misconduct.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Brian Francis Adamson be suspended for a period of three months, such suspension to take effect upon the completion of any administrative suspension.

25th January, 1996

REASONS FOR RECOMMENDATION

It is the Committee's recommendation to Convocation that the Solicitor be suspended for a period of three months, such suspension to take effect upon the completion of any administrative suspensions which may affect the Solicitor.

With respect to the matter of specific deterrence, the Committee is of the view that the Solicitor is in effect and as stated by counsel for the Society, the author of his own misfortune by refusing to respond in any way, to either his clients, new lawyer retained by his clients or to the Law Society, throughout the history of these complaints.

It must be brought to the Solicitor's attention that Rule 2 of the Rules of Professional Conduct, insofar as providing service to the clients, is a cardinal rule of the Law Society, which duty he has breached in a way that was very serious and detrimental to two elderly clients, one of whom is now deceased, causing them financial loss of an amount of \$5,000, which loss may never be recovered by the client.

With respect to general deterrence, the Committee believes it is important to send a message to the profession generally that ignoring one's clients and specifically ignoring reasonable requests by the Law Society, on two separate occasions, to respond to issues of concern raised by clients is not acceptable and is a matter that must be attended to in a timely, conscientious, proper fashion and not ignored.

Brian Francis Adamson was called to the Bar on the 6th day of April, 1979.

ALL OF WHICH IS respectfully submitted

DATED this 5th day of December, 1995

Nancy Backhouse
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months, such suspension to take effect upon the completion of any administrative suspension.

Ms. Cowie advised that the solicitor was presently under suspension and his filings had not been made. Counsel for the Society made submissions in support of the recommended penalty.

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that the solicitor be suspended for a period of 3 months following the administrative suspension and prior 1 month discipline suspension.

Carried

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the suspensions be served consecutively.

Carried

Counsel retired.

25th January, 1996

Re: Brian Douglas BATCHELAR - Brampton

The Secretary placed the matter before Convocation.

Messrs. Topp and Wilson and Ms. Harvey withdrew for this matter.

Mr. Scott did not participate.

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 November, 1995, together with an Affidavit of Service sworn 17th January, 1996 by Louis Katholos that he had effected service on the solicitor by courier to the solicitor's address at 180 Sandwood Parkway on 12th January, 1996 (marked Exhibit 1), together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on he solicitor by registered mail at the solicitor's address at 177 Vodden Street East on 29th November, 1995 (marked Exhibit 2), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 15th January, 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

Jane Harvey, Chair
Nora Angeles
Richmond Wilson

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

Jane Ratchford
for the Society

BRIAN DOUGLAS BATCHELAR
of the City
of Brampton
a barrister and solicitor

Not Represented
for the solicitor

Heard: August 31, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 15, 1994, Complaint D338/94 was issued and on July 7, 1995, Complaint D202/95 was issued against Brian Douglas Batchelar alleging that he was guilty of professional misconduct and conduct unbecoming.

The matter was heard in public on August 31, 1995 before this Committee composed of Jane Harvey, Chair, Nora Angeles and Richmond Wilson. The Solicitor was not present at the hearing nor was he represented. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

COMPLAINT D338/94

2. a) He failed to file with the Society within six months of the termination of his fiscal year ending January 1, 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;

COMPLAINT D202/95

2. a) The Solicitor acted in a conflict of interest by acting for both the purchaser, Lorne Smith, and the vendor, Brian Dunlop, of a property located at 363 Hansen Road North, Brampton, in or about January 1992:
- i) without disclosing that he was acting for both purchaser and vendor;
 - ii) by using his client, Mr. Smith, as his nominee for the purchase and mortgage financing of this property, or alternatively, by entering into a joint venture with Mr. Smith, without discussing his conflict of interest with this client, and without insisting that he obtain independent legal advice;
- c) In respect of the transaction described in paragraph 1, the Solicitor also represented the first mortgagee, the Mutual Trust Company ("Mutual Trust"). In respect of his representation of Mutual Trust, the Solicitor reported falsely to the client, as follows:
- i) he reported that Mr. Smith was the borrower, when in fact the Solicitor was the real borrower and Mr. Smith was simply his nominee, or, he failed to disclose that he was a joint ventureree with Mr. Smith;
 - ii) he reported that the following conditions of the mortgage advance had been satisfied, when he knew they had not been, as follows:
 - 1. that the property would be Mr. Smith's personal residence (in fact it was to be a rental property);
 - 2. that subsequent financing would not exceed \$25,000.00 (in fact, a second mortgage was registered on the day of closing in the amount of \$27,300.00); and
 - 3. that Mr. Smith was providing "non-borrowed cash equity" of \$22,500.00 (in fact, Mr. Smith provided no cash whatever and had no equity as he was simply a nominee);
- d) The Solicitor prepared and commissioned a false Statutory Declaration by Mr. Smith dated January 27, 1992;
- e) The Solicitor failed to produce files, books and records and failed to reply to letters dated September 28, 1994 and October 18, 1994 from the Society requesting production.

25th January, 1996

To identify the conduct unbecoming a barrister and solicitor alleged to have taken place the following particular is provided:

- f) In connection with the Solicitor's personal bankruptcy, he swore a Statement of Affairs dated November 18, 1993 which was materially false in that it failed to disclose his beneficial ownership of 363 Hansen Road North, Brampton.

Evidence

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

"AGREED STATEMENT OF FACTS - D338/94

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D338/94 and is prepared to proceed with a hearing of this matter on April 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 D338/94 and admits the particular contained therein. The Solicitor admits that the particular together with the facts as hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 9, 1976. He practised as a sole practitioner until his suspension from the practice of law on November 1, 1994 as a result of his failure to pay his annual fee.

5. The Solicitor's fiscal year end is January 1st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending January 1, 1994, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated August 5, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated September 7, 1994. 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. A copy of the Society's Second Notice is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on September 23, 1994.

25th January, 1996

9. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

10. To date, the Solicitor has not filed the required forms.

V. DISCIPLINE HISTORY

11. The Solicitor does not have a discipline history.

DATED at Toronto this 5th day of April, 1995."

"AGREED STATEMENT OF FACTS - D202/95

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D202/95 and is prepared to proceed with a hearing of this matter on August 30 and 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 D202/95 and admits the particulars 2(a) i), ii), 2c) i), ii), d), e). Particular 2b) was withdrawn and particular 2f) was not admitted but found to have been established. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

Background

4. The Solicitor was called to the Bar on April 9, 1976. He practised as a sole practitioner until his suspension from the practice of law on November 1, 1994 as a result of his failure to pay his annual fee.

5. At the time of the events detailed below, the Solicitor was a partner in the law firm of Batchelar, McLellan, in Brampton, Ontario, practising mainly in the area of real estate.

Conflict of Interest / Failure to Disclose

6. On November 18, 1993, the Solicitor made an assignment in bankruptcy. He ceased practising law on December 31, 1993. He presently works as a real estate agent.

7. The matters detailed below came to the attention of the Law Society by way of a letter of complaint from a solicitor, Michael A. Carli, on behalf of his client, Lorne C. Smith ("Smith") dated February 17, 1994 (Document Book, Tab 1).

25th January, 1996

8. By way of background, the Solicitor was both a friend and lawyer to Smith. In the early 1980s, the two of them entered into a number of joint investments in which the Solicitor also performed all legal services for Smith.

9. In December, 1991, the Solicitor approached Smith about the transfer of a property located at 363 Hansen Road North, Brampton, Ontario (the "Property"). The Solicitor requested Smith to take title to the Property on the Solicitor's behalf and to execute two mortgages to finance the purchase transaction. Smith accommodated the Solicitor because of their friendship and received no compensation in respect of the transaction.

10. No formal trust agreement was executed. However, an Indemnity Agreement (Document Book, Tab 2) was executed by the Solicitor in favour of Smith. Pursuant to the Indemnity Agreement, the Solicitor agreed to indemnify and save Smith harmless from any and all claims, costs and expenses in connection with the purchase of the Property including, but not limited to, the purchase price, land transfer taxes, closing costs, mortgage payments, etc. The Solicitor further undertook and agreed that if Smith required a release from title to the Property, that upon 30 days' notice, the Solicitor would provide full releases to Smith and remove Smith from title to the Property.

11. The purchase price of the Property was \$187,500. The transaction closed on January 24, 1992 with Smith taking sole title to the Property (Document Book, Tab 3).

12. A first mortgage was executed by Smith in favour of the Mutual Trust Company ("Mutual Trust") in the amount of \$136,500. It was registered on title to the Property on January 28, 1992 (Document Book, Tab 4).

13. A second mortgage was executed by Smith in favour of Household Realty Corporation Limited in the amount of \$27,300. It was registered on title to the Property on January 28, 1992 (Document Book, Tab 5).

14. The Property was rented to tenants, with the rent payments almost equal to the payments required on the two mortgages. The difference between the rental income and the expenses of holding the Property was made up by the Solicitor.

15. The Solicitor acted for both Smith and the vendor of the Property, Brian Dunlop, without disclosing to either of them that he was acting for both the purchaser and the vendor and without explaining the inherent conflict of interest created in his so acting. The Solicitor admits that such disclosure ought to have been made.

16. The Solicitor also failed to advise Smith to obtain independent legal advice concerning the purchase transaction and the provision of the Indemnity Agreement by the Solicitor. The Solicitor admits that he ought to have advised Smith to obtain independent legal advice.

17. In October, 1993, Smith requested that the Solicitor remove Smith's name from title and release him from the mortgages pursuant to the terms of the Indemnity Agreement. The Solicitor agreed but at this time was experiencing financial difficulties and was not able to make the appropriate arrangements.

18. On November 18, 1993, the Solicitor made an assignment in bankruptcy with Smith still registered as owner of the Property and as mortgagor on the two mortgages.

19. As of May 29, 1994, mortgage payments were still being made, with the primary source of the funds being rental income. The Solicitor borrowed any shortfall from his mother. The Property was sold at the end of September, 1994.

False Report to Mutual Trust Company

20. The Solicitor also acted for Mutual Trust in respect of its first mortgage secured on the Property.

21. The terms and conditions of the first mortgage in favour of Mutual Trust are set out in a letter dated December 24, 1991 (Document Book, Tab 6). These conditions were agreed to and accepted by Smith on January 7, 1992.

22. The terms and conditions relevant to this complaint are as follows:

1. That Smith was the borrower;
2. That the Property would be Smith's personal residence and that same would be confirmed by way of Statutory Declaration;
3. That subsequent financing would not exceed \$25,000;
4. That Smith was providing "non-borrowed cash equity" of \$22,500.

23. By letter dated January 27, 1992 (Document Book, Tab 7), the Solicitor confirmed that all of the terms and conditions of the letter of commitment had been fully met and complied with. The funds under the mortgage were disbursed on January 28, 1992.

24. The Solicitor admits that the terms and conditions of the letter of commitment pursuant to which the funds were advanced, were not fully met and complied with as follows:

1. Smith was not the borrower, the Solicitor was;
2. The Property was not Smith's personal residence but in fact was a rental property;
3. A second mortgage was registered on the Property in the amount of \$27,300;
4. Smith did not provide any cash whatsoever to the transaction and had no equity in the Property as he was simply a nominee.

25. The Solicitor admits that the information he confirmed in the letter of January 27, 1992 was false and that he was aware that it was false at the time he made the representations.

26. Mutual Trust only became aware that Smith was not the owner of the Property eight months before the Property was sold. The Solicitor admits that he failed to advise Mutual Trust of the true circumstances concerning the ownership of the Property prior to Mutual Trust advancing its loan.

Preparation and Commissioning of False Statutory Declaration

27. In connection with the provision of the first mortgage financing that Property, Smith executed a Statutory Declaration prepared and commissioned by the Solicitor in which Smith falsely declared that the Property was his principal residence (Document Book, Tab 8).

28. The Solicitor admits that Smith never resided there and that there was never any intention that Smith reside on the Property. The Property was purchased purely for investment purposes.

25th January, 1996

29. The Statutory Declaration also states that "the down-payment utilized for the purchase of this property is from my own resources and not from any borrowed funds". This was also false, to the knowledge of the Solicitor, as Smith did not put any money into the purchase.

Failure to Produce Books and Records and Failure to Reply

30. By letter dated March 9, 1994 (Tab 9), the Law Society wrote to the Solicitor requesting a response to the letter of complaint of Michael Carli dated February 17, 1994.

31. By letter dated March 21, 1994 (Tab 10), the Solicitor responded to the letter of complaint.

32. On August 4, 1994, the Solicitor and the Law Society investigator met during which the Solicitor indicated that he would provide to the Society approximately six relevant client files by August 10, 1994. A copy of the investigator's handwritten notes of this meeting are attached as Tab 11 of the Document Book.

33. By letter dated August 23, 1994 (Tab 12), the Law Society wrote to the Solicitor requesting the said files and setting out further enquiries.

34. The Law Society telephoned the Solicitor on September 14, 1994. The Solicitor returned the call on September 16th at which time he promised to respond to Law Society's concerns within one week. No response was received.

35. By letter dated September 28, 1995 (Tab 13), the Law Society wrote to the Solicitor. No response was received.

36. By letter dated October 18, 1994 (Tab 14), the Law Society again wrote to the Solicitor requesting a response within ten days. No response was received or has been received to date.

V. PRIOR DISCIPLINE

39. The Solicitor has no prior discipline.

DATED at Toronto, this day of August, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Brian Douglas Batchelar be suspended for a period of one year, such suspension to continue until all filings and fees are made and paid, with the following conditions applicable upon reinstatement:

- (i) prohibited from acting for both vendor and purchaser in a real estate transaction;
- (ii) prohibited from acting for both a private non-institutional mortgagee and mortgagor in a real estate transaction;
- (iii) must practice for one year in association with an experienced real estate practitioner approved by the Law Society;
- (iv) enrolment and cooperation with the Practice Review Program of the Law Society;
- (v) payment of costs of \$5,000.00 to the Law Society to be paid commencing 6 months after the return to practice by way of monthly instalments of \$200.00 per month.

REASONS FOR RECOMMENDATION

The Solicitor failed to carry out his duty to his client Smith to advise him to get independent legal advice, he failed to disclose to either vendor or purchaser that he was acting for both parties and he made a false report to the institutional mortgagee on the transaction. He also had his client Smith sign a false Statutory Declaration. All of this was on a transaction in which the Solicitor had a direct financial interest.

We find that the Form 2 for January 1, 1993 filed by the Solicitor was incorrect and the sworn Statement of Affairs filed by the Solicitor in his bankruptcy was also incorrect in that they did not refer to the Solicitor's direct financial interest in the above-mentioned property.

The Solicitor has also failed to make his annual filing dated January 1, 1994, which failure has not been rectified to date.

Accordingly, we recommend a one year suspension with conditions on reinstatement designed to reduce conflict of interest situations.

Brian Douglas Batchelar was called to the Bar on the 9th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 9th day of November, 1995

Jane Harvey
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 1 year to continue until all filings were made and paid with conditions upon reinstatement.

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

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

Counsel retired.

Carried

Re: Anthony Chris BAZOS - Toronto

The Secretary placed the matter before Convocation.

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

Mr. Scott did not participate.

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

25th January, 1996

Convocation had before it the Report of the Discipline Committee dated 4th December, 1995, together with an Affidavit of Service sworn 17th January, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th December, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th January, 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

Nancy L. Backhouse, Chair
Nora Angeles
Gary Gottlieb

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

Leslie Cameron
for the Society

ANTHONY CHRIS BAZOS
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: November 8, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On March 31, 1995, Complaint D63/95 was issued against Anthony Chris Bazos alleging that he was guilty of professional misconduct.

The matter was heard in public on November 8, 1995 before this Committee composed of Nancy L. Backhouse, Chair, Nora Angeles and Gary Gottlieb. The Solicitor was present at the hearing and was not represented. Leslie Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D63/95

- 2. (a) he failed to co-operate with the Law Society representative's attempts to conduct an audit, pursuant to section 18 of Regulation 708, by failing to produce his books and records for examination despite numerous attempts by the Law Society to schedule appointments to conduct the audit.

25th January, 1996

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 D63/95 and is not prepared to proceed with a hearing of this matter on November 8, 1995.

II. IN PUBLIC/IN CAMERA

2. The Solicitor will be bringing a motion to have this matter heard in camera.

III. ADMISSIONS

3. The Solicitor has reviewed Complaint D63/95 and admits the particulars contained therein. The Solicitor does not admit that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on June 19, 1952. He has been suspended for non-payment of annual fee since November 1, 1993.

5. On July 7, 1994, Janet Merkley, an Examiner with the Audit and Investigation Department, attended at the Solicitor's office to conduct an audit of the Solicitor's books and records. Ms. Merkley left her card as she received no answer. A copy of Ms. Merkley's notes are contained at (Tab 1 of the Document Book).

6. By registered letter dated July 11, 1994 (Tab 2, Document Book), the Law Society advised the Solicitor that an audit of his books and records had been instructed pursuant to the *Law Society Act*. Ms. Merkley advised the Solicitor that she had attended at his address on July 7, 1994 and left her business card. She further advised that she did not receive a call from the Solicitor. Ms. Merkley requested that the Solicitor telephone her as soon as possible in order for the examination to commence. The Law Society's letter was delivered and signed for on July 13, 1994.

7. On July 11, 1994, the Solicitor called the Law Society and left a message on Ms. Merkley's voice mail with his telephone number. On July 25, 1994, Ms. Merkley returned the Solicitor's call and left a message on his answering machine to return her call. On July 27, 1994, Ms. Merkley called the Solicitor and arranged an interview with him for August 5, 1994. The Solicitor advised that he would produce all his books and records to Ms. Merkley.

8. On August 5, 1994, the Solicitor left a message for Ms. Merkley canceling the appointment due to illness. A copy of the handwritten notes of the telephone message are contained at (Tab 3 of the Document Book).

25th January, 1996

9. On August 8, 1994, Solicitor left a message for Ms. Merkley advising that he could not meet with her that week due to medication for his lung condition. The Solicitor further advised that he would contact Ms. Merkley later that week to arrange another appointment. A copy of the handwritten notes of the telephone message are contained at (Tab 3 of the Document Book).

10. On August 9, 1994 and August 29, 1994, Ms. Merkley left messages on the Solicitor's answering machine requesting that he return her call and schedule an appointment. A copy of the handwritten notes of the messages are contained at (Tab 3 of the Document Book).

11. By registered letter dated August 31, 1994 (Tab 4, Document Book), the Solicitor was reminded of the many contacts made by Ms. Merkley to arrange an appointment to examine his books and records. The Solicitor was advised that if the matter was not resolved within two weeks, it would be referred to the Discipline Department. The Law Society's letter was delivered and signed for on September 6, 1994.

12. By letter dated August 14, 1994 (Tab 5, Document Book), which was received by the Law Society on September 14, 1994, the Solicitor advised Ms. Merkley that he was unable to meet with her concerning his books and records due to a chronic condition of bronchial asthma. The Solicitor further advised that he would be available to meet with Ms. Merkley on September 22, 1994, September 23, 1994, or any time during the following week. The Solicitor advised further that he was not practicing at that time.

13. By letter dated September 22, 1994 (Tab 6, Document Book), the Solicitor advised Ms. Merkley that he had a doctor's appointment on September 23, 1994 and requested that they meet on September 29, 1994 or September 30, 1994. The Solicitor again advised that there was no prejudice to anyone as he was not practicing law at that time.

14. On September 23, 194, the Solicitor left a message on Ms. Merkley's voice mail canceling the appointment for that day. A copy of the handwritten notes of the telephone message are contained at (Tab 7 of the Document Book).

Note: Amendment, see page 38

15. By letter dated September 30, 1994 (Tab 8, Document Book), the Solicitor advised that due to medical complications, he could not meet with Ms. Merkley that day. The Solicitor further advised that his medical condition may result in his hospitalization and that he would advise Ms. Merkley of his medical status by the middle of the following week.

16. By registered letter dated November 15, 1994 (Tab 9, Document Book), Ms. Merkley advised the Solicitor that she saw no reason as to why the Solicitor's books and records could not be delivered to the Law Society for examination as his letters had been delivered to the Law Society. Ms. Merkley advised the Solicitor that if he was unable to deliver the books and records to the Law Society, she could arrange to have them picked up at his residence. The Solicitor was requested to telephone Ms. Merkley to arrange a time to commence the examination of his books and records. The Law Society's letter was delivered and signed for on November 17, 1994.

17. By letter dated November 28, 1994 (Tab 10, Document Book), the Solicitor advised that the delay in responding to Ms. Merkley was due to his continuing poor health. The Solicitor further advised that he did not wish his records to leave his possession. The Solicitor advised further that his health had improved and that he would contact Ms. Merkley by the end of the week to make an appointment for the following week.

25th January, 1996

18. By letter dated December 6, 1994 (Tab 11, Document Book), the Solicitor advised that he has been unable to comply with the Law Society's request due to a recurrence of his health problem. The Solicitor further advised that he would contact Ms. Merkley the following week to arrange an appointment to complete the matter.

19. By letter dated December 23, 1994 (Tab 12, Document Book), the Solicitor advised that he was suffering from a severe chest cold and that he would contact Ms. Merkley the following week to arrange a time to complete the matter.

20. On January 5, 1995, Ms. Merkley left a message for the Solicitor to return her call. She advised that the matter would be referred to the Discipline Department. A copy of the handwritten notes of the telephone message left for the Solicitor are contained at (Tab 13 of the Document Book).

21. To date, the Solicitor has not produced his books and records to the Law Society.

V. DISCIPLINE HISTORY

22. On January 20, 1983, the Solicitor was reprimanded in Committee and ordered to pay costs of \$2,500.00, for conduct unbecoming.

DATED at Toronto this 24th day of August, 1995."

Based on the Agreed Statement of Facts of the documentary evidence, the Committee is satisfied that there should be a finding of professional misconduct.

Note: Amendment, see page 38

RECOMMENDATION AS TO PENALTY

The Committee recommends that Anthony Chris Bazos be reprimanded in Convocation if his books and records are produced by the time this matter reaches Convocation. If the books and records are not produced, the penalty should be an indefinite suspension until such time as the books and records are produced.

REASONS FOR RECOMMENDATION

The Solicitor is 70 years old. He has been suffering from a long-standing condition of depression and a bronchial condition complicated by allergies which have left him unable to deal with the substance of this complaint. He is unable to work at the present time and has been administratively suspended since November 1, 1993.

The Committee canvassed with the parties the feasibility of the Solicitor resigning administratively and was advised by Counsel for the Law Society that the Solicitor would not be able to meet the requirements. Had this been feasible, the Committee would have dismissed the complaint. Because this was not feasible, the Committee accepted the Law Society's submission and recommends to Convocation that the Solicitor be reprimanded in Convocation if he has produced his books and records by the time the matter gets to Convocation and that otherwise he be suspended indefinitely until he produces the books and records.

Convocation may wish to consider an alternative way of dealing with this matter which would have been acceptable to the Committee if it had been raised during the hearing as follows:

25th January, 1996

The Complaint be dismissed provided the Solicitor enters into an undertaking not to practise law until the following conditions are met:

1. he has provided to the Law Society Senior Counsel - Discipline, such evidence that he or she may require as to his physical and mental ability to practise law;
2. he provide all requested books and records and cooperate with the Law Society with respect to any further matters regarding his books and records.

Anthony Chris Bazos was called to the Bar on the 19th day of June, 1952.

ALL OF WHICH is respectfully submitted

DATED this 4th day of December, 1995

Nancy L. Backhouse
Chair

Ms. Cameron requested two amendments be made to the Report as follows:

- page 5, paragraph 14, first line - date should be September 23, "1994"
- page 7, last line - should read "document evidence" instead of "documentary".

There were no submissions and the Report as amended was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if his books and records were produced and if the books and records were not produced that the solicitor be suspended indefinitely until the books and records were produced.

The Committee alternatively recommended that the Complaint be dismissed if the solicitor gave an Undertaking not to practise until the conditions set out in the Report were met.

The solicitor offered to give an Undertaking not to practise.

Ms. Cameron made submissions in support of an indefinite suspension.

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

It was moved by Mr. Strosberg, seconded by Ms. Carpenter-Gunn that the alternate recommendation be followed.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision to accept the alternate recommendation that upon the solicitor's written Undertaking not to practise, the Complaint would be dismissed.

The matter was stood down in order for Ms. Cameron and Mr. Bazos to draw the Undertaking.

25th January, 1996

Re: Shawn Dennis Randle CLANCY - Toronto

The Secretary placed the matter before Convocation.

Mr. Swaye withdrew for this matter.

Mr. Scott did not participate.

Mr. Glenn Stuart 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 25th October, 1995, together with an Affidavit of Service sworn 24th November, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd November, 1995 (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

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

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

Audrey Cado
for the Society

SHAWN DENNIS RANDLE CLANCY
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solicitor

Heard: September 20, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 10, 1995 Complaint D395/94 was issued against Shawn Dennis Randle Clancy alleging that he was guilty of professional misconduct.

The matter was heard in public on September 20, 1995 before this Committee comprising Gerald A. Swaye, Q.C., Chair, Tamara K. Stomp and Robert B. Aaron. The Solicitor attended the hearing and represented himself. Audrey Cado appeared on behalf of the Law Society.

DECISION

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

Complaint D395/94

2. a) He failed to file with the Society since his call to the Bar on February 5, 1993, 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(3) of Regulation 708 made pursuant to the Law Society Act.

Evidence

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 D395/94 and is prepared to proceed with a hearing of this matter on August 2, 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 D395/95 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 February 5, 1993.

5. The Solicitor has not filed since his call to the Bar on February 5, 1993. The Law Society therefore assumed the Solicitor's day of call, February 5th, as his fiscal year end. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending February 5, 1993, as required by S.16(2) of Regulation 708 under the Law Society Act.

6. A Notice of Default in Annual Filing, dated September 7, 1994 was forwarded to the Solicitor by the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Law Society forwarded to the Solicitor a Second Notice of Default in Annual Filing dated October 11, 1994. 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

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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 13, 1994. A copy of the Society's Second Notice and Acknowledgement of receipt of a registered item is attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not reply to this correspondence.

8. The late filing fee began to accrue on October 28, 1994.

9. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

10. To date, the Solicitor has not filed the required forms.

V. DISCIPLINE HISTORY

11. The Solicitor does not have a discipline history.

DATED at Toronto this 2nd day of August, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends to Convocation that should the Solicitor file by the time the matter reaches Convocation, that he be reprimanded in Convocation. Should he not file by the time the matter reaches Convocation, that he be suspended for one month and thereafter until the filing is made. The Solicitor is to pay the Society's costs of \$250.

REASONS FOR RECOMMENDATION

By the Agreed Statement of Facts, the Solicitor admits the Complaint D395/95 and the particulars contained therein and that they constitute professional misconduct.

The essence of the offence is that the Solicitor did not file his Form 2 or Form 3 within six months after the ending of his fiscal year. He has not filed to date. The Solicitor appeared before the Committee indicating that he was attempting to take care of the matters and hoped to do so by Convocation. The Solicitor does not have a discipline history and has indicated that he is not presently practising.

The penalty recommended is the standard one for misconduct in the nature of administrative filing as established by precedents and this Committee sees nothing to take it out of the ordinary situation.

The Committee recognizes the importance of filing with the Society the forms required and the penalty reflects the gravity of the misconduct.

25th January, 1996

Shawn Dennis Randle Clancy was called to the Bar on the 5th day of February, 1993.

ALL OF WHICH is respectfully submitted

DATED this 25th of October, 1995

Gerald A. Swaye, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded if he completed his filings. If his filings were not completed that he be suspended for a period of 1 month and thereafter until the filings were made and pay costs in the amount of \$250.

Mr. Stuart advised that the solicitor had not completed his filings and was presently under an administrative suspension.

It was moved by Mr. Topp, seconded by Mr. Millar that the solicitor be suspended for a period of 1 month to follow on completion of the administrative suspension and pay the Society's costs.

Carried

Counsel retired.

Re: Lorenzo Antonio DE FRANCO - Nepean

The Secretary placed the matter before Convocation.

Messrs. Topp and Wilson and Ms. Puccini withdrew for this matter.

Mr. Scott did not participate.

Mr. Perrier appeared as counsel 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 November, 1995, together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 30th November, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 12th January, 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
Helene B. Puccini
Richmond C. E. Wilson

25th January, 1996

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

Neil Perrier
for the Society

LORENZO ANTONIO DEFRANCO
of the City
of Nepean
a barrister and solicitor

Allan R. O'Brien
for the solicitor

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On December 7, 1994, Complaint D308/94 was issued and on January 13, 1995, Complaint D436/94 was issued against Lorenzo Antonio DeFranco alleging that he was guilty of professional misconduct.

The matter was heard in public on August 21, 1995 before this Committee composed of Thomas E. Cole, Chair, Helene B. Puccini and Richmond C.E. Wilson. The Solicitor was in attendance at the hearing and was represented by Allan R. O'Brien. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D308/94

2. a) He borrowed the sum of twenty-four thousand and five hundred dollars (\$24,500), more or less, in or around September and November, 1991, from his client, Mary Daly, without ensuring that his client's interests were fully protected by the nature of the case and by independent legal representation;
- b) He filed or caused to be filed a Form 2 report for the period December 1, 1991 to November 30, 1992, which he knew or ought to have known was false and misleading as it failed to declare his indebtedness to Mary Daly in the amount of \$24,500.

Complaint D436/94

2. a) He failed to reply to the Law Society regarding a complaint by Charles Ghadban, despite letters dated August 10, 1994 and September 21, 1994, and a telephone message left for him on September 6, 1994, and a telephone conversation on August 25, 1994

25th January, 1996

- b) He failed to serve his client, Charles Ghadban, in a conscientious, diligent and efficient manner in that he:
- i) failed to respond to Mr. Ghadban's numerous attempts to contact him by telephone;
 - ii) failed to keep appointments with his client without explanation;

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 D308/94 and D436/94 and is prepared to proceed with a hearing of this matter on August 21, 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. However, the Solicitor may request that certain medical and related evidence to be tendered during the penalty portion of the hearing be received in camera.

III. ADMISSIONS

3. The Solicitor has reviewed Complaints D308/94 and D436/94 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on March 21, 1975 and practised as a sole practitioner until he was disbarred by Order of Convocation on February 24, 1983. By a Report of the Admissions Committee dated February 28, 1986 the Solicitor was readmitted as a member of the Law Society. The Solicitor practises law in association with Bruno Toneguzzi, under the firm name Toneguzzi & DeFranco.

Complaint D308/94

Particular 2(a) He borrowed the sum of twenty-four thousand and five hundred dollars (\$24,500), more or less, in or around September and November, 1991, from his client, Mary Daly, without ensuring that his client's interests were fully protected by the nature of the case and by independent legal representation.

5. The Complainant, Frank McGuire, was retained in or around April, 1993 to act as solicitor for the estate of the late Mary Daly who had died on April 17, 1993. Mrs. Daly was a former client of the Solicitor.

6. The executors of the estate, Bryan Daly and Robert Patenaude, provided Mr. McGuire with two promissory notes, from the Solicitor to Mrs. Daly, that had been found amongst Mrs. Daly's personal papers (Tab 1, Document Book). One promissory note was dated September 20, 1991 and was in the amount of \$2,500.00; the other promissory note was dated November 22, 1991 and was in the amount of \$22,000.00.

25th January, 1996

7. By letter dated April 28, 1993 (Tab 2, Document Book), Mr. McGuire advised the Solicitor that he had been retained to act for the estate of Mrs. Daly. In this letter, Mr. McGuire enclosed a copy of a direction executed by the co-executors of Mrs. Daly's estate (Tab 3, Document Book) and requested that the Solicitor provide him with copies of his complete files relating to Mrs. Daly together with a detailed accounting from him relating to monies loaned by either Mrs. Daly or her late husband of which the Solicitor had personal knowledge.

8. Under cover of letter dated May 11, 1993 (Tab 4, Document Book), the Solicitor provided Mr. McGuire with copies of various files relating to Mrs. and Mr. Daly, including copies of two promissory notes from the Solicitor to Mr. Daly, dated January 18, 1989 and February 22, 1989 respectively (Tab 5, Document Book). These promissory notes related to loans taken by the Solicitor from Mr. Daly which were the subject of disciplinary proceedings in 1983, the details of which are more fully described below. The Solicitor did not however provide Mr. McGuire with the copies of the promissory notes referred to in paragraph 6 herein nor did he advise Mr. McGuire of the same.

9. Mr. McGuire subsequently contacted the Solicitor's associate, Mr. Bruno Toneguzzi, by telephone. Mr. Toneguzzi spoke to the Solicitor who acknowledged the existence of the promissory notes to Mrs. Daly and that he had borrowed money from her.

10. The Solicitor confirmed to a Law Society representative that he had borrowed \$2,500.00 from Mrs. Daly in September of 1991 and had deposited this money into his personal bank account. The Solicitor also confirmed that he had borrowed an additional \$22,000.00 from Mrs. Daly in November of 1991, and that he had deposited this money into his firm's general account on November 7, 1991. A copy of the bank deposit slip and the firm's bank statement are contained at Tabs 6 and 7 of the Document Book respectively. This deposit was not however recorded on his firm's general and trust account receipts and disbursements journal (Tab 8, Document Book).

11. On the same day that the Solicitor deposited the \$22,000.00 that he had borrowed from Mrs. Daly into his general account, a certified cheque in the amount of \$20,227.44 (Tab 7, Document Book) was issued from this account to Revenue Canada in payment of the Solicitor's outstanding employee remittances owing to Revenue Canada. A copy of a Revenue Canada Statement of Account is contained at Tab 9 of the Document Book.

12. The Solicitor admits that Mrs. Daly received no security for these loans to the Solicitor and that he did not advise her to obtain independent legal advice with respect to these loans. However, Mrs. Daly had received independent legal advice with respect to some previous loans from Mr. Kenneth Cramer, a lawyer in the City of Ottawa.

13. The Solicitor admits that he has not repaid these loans to Mrs. Daly or to her estate notwithstanding the fact that the first loan was due on October 31, 1991 and that the second loan was due on December 16, 1991.

14. The Solicitor made a voluntary assignment into bankruptcy on or about September 23, 1993.

Particular 2(b) He filed or caused to be filed a Form 2 report for the period December 1, 1991 to November 30, 1992 which he knew or ought to have known was false and misleading as it failed to declare his indebtedness to Mary Daly in the amount of \$24,500.

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15. In December of 1992, the Solicitor filed a sworn Form 2 Certificate with the Law Society for his fiscal year ended November 30, 1992 (Tab 10, Document Book). Attached to the certificate was a letter from the Solicitor, dated December 23, 1992, acknowledging that he was indebted to Mr. Daly in the amount of approximately \$60,000.00 (Tab 11, Document Book), which represented the entire amount owing to both Mr. and Mrs. Daly. However, the Solicitor failed to specifically disclose that he had borrowed \$24,500, of the declared \$60,000 indebtedness, from Mrs. Daly subsequent to his readmission to the practice of law in 1986.

Complaint D436/94

Particular 2(b) He failed to serve his client, Charles Ghadban in a conscientious, diligent and efficient manner in that he:

- i) failed to respond to Mr. Ghadban's numerous attempts to contact him by telephone;
- ii) failed to keep appointments with his client without explanation;
- iii) misled his client into believing that his divorce matter was proceeding, when in fact the Petition for Divorce had not been filed with the court.

16. In June, 1992, the Solicitor was retained by the Complainant, Charles Ghadban to represent him in connection with a matrimonial matter, involving his wife's petition to remove their children out of the jurisdiction and also with respect to negotiating a child and spousal support agreement. This matter was completed in July of 1992. Mr. Ghadban instructed the Solicitor to take no further steps on the file until December of 1993.

17. In or around December, 1993, Mr. Ghadban instructed the Solicitor to commence divorce proceedings. Between December, 1993 and March 25, 1994, Mr. Ghadban telephoned the Solicitor on a number of occasions to inquire as to the status of his divorce proceeding and left messages for the Solicitor to return his calls. Finally, on March 25, 1994, the Solicitor provided Mr. Ghadban with a divorce petition for execution and advised him that his then wife had 20 days within which to file a response.

18. After Mr. Ghadban had attended to execute the petition, he telephoned the Solicitor to confirm that it had been served upon his wife and was assured that it had and that he had nothing to worry about.

19. As Mr. Ghadban had received or heard nothing from either his wife or the Solicitor by the end of April, 1994, he telephoned the Solicitor on numerous occasions to inquire as to the status of his divorce proceeding and left messages for the Solicitor to return his calls. As the Solicitor did not respond to his calls, Mr. Ghadban finally advised the Solicitor's secretary that he intended to retain new counsel and requested that she have the Solicitor deliver his file. At this point, the Solicitor returned Mr. Ghadban's telephone calls and explained that he was experiencing some personal problems, but assured him that everything was okay with his file and requested that Mr. Ghadban continue to use his services, which Mr. Ghadban agreed to do.

20. The Solicitor's pattern of conduct continued with Mr. Ghadban, in that he again failed to return his telephone calls and cancelled appointments without explanation over the course of the next couple of months. Finally at the end of June, 1994, Mr. Ghadban advised the Solicitor's secretary that he intended to

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file a formal complaint with the Law Society, after which the Solicitor telephoned him and once again requested Mr. Ghadban's indulgence, explaining that he was still experiencing some personal problems. Mr. DeFranco also admitted to Mr. Ghadban that he had not filed the necessary court documents and had not been honest with him on a number of occasions so as not to risk losing Mr. Ghadban as a client. Mr. Ghadban picked up the file at the Solicitor's office on June 30th, 1994.

21. By letter dated July 24, 1994 (Tab 12, Document Book), Mr. Ghadban made a formal complaint against the Solicitor to the Law Society.

22. By letter dated November 15, 1994 (Tab 13, Document Book), Mr. Ghadban delivered a letter to the Law Society detailing the telephone calls that were not returned by the Solicitor and appointments that were cancelled by the Solicitor between December, 1993 and June, 1994.

Particular 2(a) He failed to reply to the Law Society regarding a complaint by Charles Ghadban, despite letters dated August 10, 1994 and September 21, 1994, and a telephone message left for him on September 6, 1994, and a telephone conversation on August 25, 1994.

23. By letter dated August 10, 1994 (Tab 14, Document Book), the Law Society delivered to the Solicitor a copy of Mr. Ghadban's letter of complaint and requested his comments with respect to the same. The Solicitor was also reminded of his obligation to reply promptly to any communications from the Society and was requested to respond within two weeks. The Solicitor did not respond.

24. On or about August 25, 1994, a Law Society representative telephoned the Solicitor who advised that he had been away for three days and therefore had not received the Law Society's letter until August 16, 1994. The Solicitor further advised that he would provide a response the following week. A copy of the Law Society representative's handwritten notes, dated August 25, 1994, are contained at Tab 15 of the Document Book. The Solicitor did not deliver a response to the Law Society the following week as promised.

25. On or about September 6, 1994, a Law Society representative telephoned the Solicitor's office and was advised by his secretary that a response letter had been sent out. The Law Society representative left a message for the Solicitor to return the call. The Solicitor did not return the call. A copy of the Law Society representative's handwritten notes, dated September 6, 1994, are contained at Tab 15 of the Document Book.

26. By registered letter dated September 21, 1994 (Tab 16, Document Book), the Law Society requested a response to its letter dated August 10, 1994 within seven days, failing which the matter would be referred to the Discipline Committee. The Solicitor was further reminded of his professional obligation to respond promptly to communications from the Law Society.

27. No response has been received from the Solicitor to date.

V. DISCIPLINE HISTORY

28. By a Report and Decision of the Discipline Committee, dated February 9, 1983 (Tab 17, Document Book), the Solicitor was found guilty of professional misconduct for misappropriation, borrowing from his clients (two instances), misrepresentations made to his clients, and for filing a false and misleading Form 2 Certificate in which he declared that he was not indebted to a client or former client. The Solicitor was disbarred by Order of Convocation dated February 24, 1983 (Tab 17, Document Book).

25th January, 1996

29. By a Report of the Admissions Committee, dated February 26, 1986 (Tab 18, Document Book) the Solicitor was readmitted as a member of the Law Society subject to the conditions that he: (i) give an undertaking that, without the express approval of Convocation, he would not practise on his own and would not have authority to sign cheques drawn on any trust account; and (ii) he attend the Bar Admission Course lectures on Real Estate and Landlord and Tenant Law.

31. On October 15, 1991, the Solicitor received a Reprimand in Committee for failing to serve a client in a conscientious, diligent and efficient manner in that he: (i) failed to proceed with a client's divorce action in a timely fashion; (ii) misinformed his client regarding the status of his divorce action; and (iii) failed to provide his client with adequate notice of upcoming discoveries.

DATED at Ottawa, this 21st day of August, 1995."

RECOMMENDATIONS AS TO PENALTY

The Committee recommends that Lorenzo Antonio DeFranco be disbarred.

REASONS FOR RECOMMENDATION

The issue before the Committee in this matter was one of penalty. The Agreed Statement of Facts is clear that the member was previously disbarred in the year 1983 for misconduct involving misappropriation and borrowing from his clients all as is set out in paragraph 28 of this report. The matter of this complaint is of a more serious nature in that the member has now declared bankruptcy and his former client will suffer a loss. The Law Society counsel suggested that the penalty should be progressive so that the issue of general deterrence would be foremost in that the integrity of the Law Society could be preserved. The member displayed a lack of integrity in filing a false affidavit with his annual Form 2 and the member's failure to respond to the Law Society in connection with complaint D436/94 has shown the Committee that the member is ungovernable.

It is the recommendation of the Committee that there should be a progressive penalty. It is the Committee's view that the public would not be protected should the member be permitted to continue to practise.

Lorenzo Antonio DeFranco was called to the Bar on the 21st day of March, 1975 and on the 28th day of February, 1986.

ALL OF WHICH is respectfully submitted

DATED this 14th day November, 1995

Thomas E. Cole
Chair

There were no submissions and the Report was voted on and adopted.

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

25th January, 1996

Mr. Perrier made submissions in support of the recommended penalty.

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

Carried

Counsel retired.

Re: Fredrick Blake KENWELL - Toronto

The Secretary placed the matter before Convocation.

Ms. O'Connor and Ms. Harvey withdrew for this matter.

Mr. Scott did not participate.

Ms. Cowie appeared for the Society and Mr. Norman Panzica appeared for the solicitor. The solicitor was not present.

The matter was stood down.

Re: Alan Douglas KURTZ - Toronto

The Secretary placed the matter before Convocation.

Mr. Swaye withdrew for this matter.

Mr. Scott did not participate.

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

Ms. Cohen requested an adjournment on consent to the next Discipline Convocation. She advised that the solicitor was being treated for depression and requested additional time to complete his filings.

It was moved by Mr. Marrocco, seconded by Ms. Ross that the adjournment be granted to the next Convocation Assignment Tribunal in February.

Carried

Counsel retired.

Convocation took a brief recess and continued with the following discipline matters.

Re: Nancy Grace KOSTER - Georgina

The Secretary placed the matter before Convocation.

Ms. Backhouse and Ms. O'Connor withdrew for this matter.

Mr. Scott did not participate.

Mr. Brown appeared on behalf of the Society. No one appeared for the solicitor nor was the solicitor present.

25th January, 1996

Convocation had before it the Report of the Discipline Committee dated 7th September, 1995, together with an Affidavit of Service sworn 24th October, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 6th October, 1995 (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

Nancy L. Backhouse, Chair
W. Michael Adams
Shirley O'Connor

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

Christina M. Budweth
for the Society

NANCY GRACE KOSTER
of the Town
of Georgina
a barrister and solicitor

Not Represented
for the solicitor

Heard: August 2, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On April 10, 1995, Complaint D113/94 was issued against Nancy Grace Koster alleging that she was guilty of professional misconduct.

The matter was heard in public on August 2, 1995 before this Committee comprising Nancy L. Backhouse, Chair, W. Michael Adams and Shirley O'Connor. The Solicitor attended the hearing and represented herself. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint D113/94

2. a) she failed to reply to the Law Society regarding her failure to file monthly trust comparisons and account to the Law Society for trust funds remaining in her control, despite letters dated August 10, 1993, September 29, 1993, November 23, 1993, June 1, 1994 and March 9, 1995.

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 D113/94 and is prepared to proceed with a hearing of this matter on July 18 and 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 D113/94 and admits the particulars contained therein. The Solicitor further admits that the said particulars supported by the facts hereinafter set out constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on April 13, 1978. She has been suspended from the practice of law since May 25, 1990 as a result of her failure to pay her Errors and Omissions levy.

5. The Law Society performed an audit on the Solicitor's books and records on March 15, 1990. During the audit, the Law Society noted several inadequacies and advised the Solicitor of the inadequacies by letter dated March 19, 1990. The Solicitor was requested to address the inadequacies and provided the Law Society with an Undertaking dated July 12, 1990 in which she undertook, among other things, to file with the Society monthly trust comparisons until such time as the trust balance was zero.

6. The Solicitor did not respond, and as a result, Complaint D203/92 was issued against the Solicitor on December 9, 1992 for failing to reply to the Law Society, failing to comply with her Undertaking to the Law Society and failing to account to the Law Society for trust funds remaining in her control.

7. By letter dated May 31, 1993, the Solicitor provided to the Law Society her bank statement for her trust account showing a balance of \$646.43. She advised that cheques had been written to clear the account, however, some of the cheques were not cashed. The Solicitor further advised that she had requested bank statements from the bank for May 1990 to August 1990 to determine which cheques remained outstanding at which time she would advise the Law Society. A copy of the Solicitor's letter dated May 31, 1993 is attached as Exhibit "A" to this Agreed Statement of Facts.

8. On July 7, 1993, the Solicitor was reprimanded in committee with respect to Complaint D203/92.

9. Subsequent to the discipline hearing, the Audit and Investigation Department continued to correspond with the Solicitor. By letter dated August 10, 1993, the Solicitor was requested to provide to the Society trust comparisons, a trust listing, a trust bank reconciliation and a copy of the bank statements for her trust account for the period June 30, 1990 to July 31, 1993 and thereafter, until the trust account has been appropriately disbursed. The Solicitor did not respond. A copy of the Law Society's letter dated August 10, 1993 is attached as Exhibit "B" to this Agreed Statement of Facts.

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10. By letter dated September 29, 1993, the Law Society wrote to the Solicitor and enclosed a copy of its letter dated August 10, 1993. The Solicitor was requested to respond forthwith. The Solicitor did not respond. A copy of the Law Society's letter dated September 29, 1993 is attached as Exhibit "C" to this Agreed Statement of Facts.

11. By letter dated November 23, 1993, the Law Society wrote to the Solicitor enclosing a copy of its letters dated August 10, 1993 and September 29, 1993. The Solicitor was advised that if her response was not received within 15 days, the matter would be referred to the Discipline Committee. The Solicitor did not respond. The letter was returned to the Society marked "unclaimed". A copy of the Law Society's letter dated November 23, 1993 and the returned envelope is attached as Exhibit "D" to this Agreed Statement of Facts.

12. By ordinary and registered letter dated June 1, 1994, the Law Society wrote to the Solicitor confirming her telephone conversation with the Society in which the Solicitor advised that she would respond to the Audit Department. The Solicitor did not respond. The registered letter was signed for by the Solicitor on June 6, 1994. A copy of the Law Society's letter dated June 1, 1994 and the Acknowledgement of Receipt Card is attached as Exhibit "E" to this Agreed Statement of Facts.

13. By ordinary and registered letter dated March 9, 1995, the Law Society wrote to the Solicitor and enclosed copies of its previous letters to her and confirmed her telephone conversation with the Society in which she advised that she would respond within one week. The Solicitor was reminded of her professional obligation to respond promptly to communications from the Society. The Solicitor was advised that should her reply not be received by March 17, 1995, a formal complaint would be issued. The Solicitor did not respond. The registered letter was returned to the Law Society marked "unclaimed". A copy of the Law Society's letter dated March 9, 1995 and the returned envelope is attached as Exhibit "F" to this Agreed Statement of Facts.

V. DISCIPLINE HISTORY

14. The Solicitor was found guilty of professional misconduct with respect to having misled a client, failure to reply to the Law Society and failure to file. The Solicitor was reprimanded in Convocation on February 22, 1989 with an Undertaking not to take on any new matters re: family law until released by Convocation.

15. The Solicitor was found guilty of professional misconduct with respect to her failure to reply to the Law Society. The Solicitor was reprimanded in Committee on May 25, 1990.

16. The Solicitor was found guilty of professional misconduct with respect to her failure to reply to the Law Society, failure to comply with her Undertaking to the Law Society dated July 12, 1990 and failure to account to the Law Society for trust funds remaining in her control. The Solicitor was reprimanded in Committee on July 7, 1993.

DATED at Toronto this 17th day of July, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Nancy Grace Koster be reprimanded in Convocation and pay Law Society costs in the amount of \$750.00, payable at \$50.00 per month commencing forthwith.

REASONS FOR RECOMMENDATION

The Society was most lenient in imposing only a reprimand in Committee on July 7, 1993 despite the Solicitor's prior discipline history which at that time included a reprimand in Convocation and a reprimand in Committee. The Solicitor failed to reply to four letters, with a fifth letter being left unclaimed, in which the Society requested information on her trust account. The monitoring of its members' trust accounts is the main method by which the Society protects funds entrusted to its members by the public. The public's confidence in the Society is damaged by its members' failure to respond promptly to correspondence and questions from the Society. A reprimand in Convocation is recommended as doing so at the Committee level would send the wrong message to the Solicitor, the profession and the public.

Considering that the Society still does not have the complete information required and also that the Solicitor was excused from paying costs at her previous discipline hearing, it is recommended that this is not an appropriate case to excuse her from paying the Society's costs.

Nancy Grace Koster was called to the Bar on the 13th day of April, 1978.

ALL OF WHICH is respectfully submitted

DATED this 7th day of September, 1995

W. Michael Adams, for the Committee

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded and pay costs in the amount of \$750 payable at \$50 per month.

It was moved by Mr. Marrocco, seconded by Mr. Strosberg that the solicitor be suspended until she appeared to be reprimanded in Convocation.

Carried

Counsel retired.

Re: Maurice Alfred LOTON - Wasaga Beach

The Secretary placed the matter before Convocation.

Messrs. Topp and Swaye withdrew for this matter.

Mr. Scott did not participate.

Ms. Janet Brooks appeared for the Society and Mr. Hatley, Duty Counsel, appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 25th October, 1995, together with an Affidavit of Service sworn 24th November, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 23rd November, 1995 (marked Exhibit 1) together with the Acknowledgement, Declaration and Consent signed by the solicitor on the 2nd January, 1996 (marked Exhibit 2). Copies of the Report having been forwarded to the Benchers prior to Convocation the reading of it was waived.

25th January, 1996

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

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

Janet Brooks
for the Society

MAURICE ALFRED LOTON
of the Town
of Wasaga Beach
a barrister and solicitor

D. Kevin Carroll, Q.C.
for the solicitor

Heard: September 19, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 30, 1995 Complaint D4/95 was issued against Maurice Alfred Loton alleging that he was guilty of professional misconduct.

The matter was heard in public, with a portion of the evidence received in camera, on September 19, 1995, before this Committee comprising Gerald A. Swaye, Q.C., Chair, Tamara K. Stomp and Robert B. Aaron. The Solicitor attended the hearing and was represented by D. Kevin Carroll, Q.C. Janet Brooks appeared on behalf of the Law Society.

DECISION

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

Complaint D4/95

2. a) In four real estate transactions, he breached the provisions of Rule 5 of the Rules of Professional Conduct by acting in a conflict of interest in representing both parties to the transactions and by recommending a course of action that was not in the best interests of his client, Mr. McCrudden, in order to protect the interests of his other client, Mr. Gaska.

The transactions were with respect to the following properties:

- i) 168 Main Street, Wasaga Beach
- ii) 224 Weir Street, Stayner
- iii) Part South half Lot 2, Concession 2, Township of Nottawasaga, (Avening)
- iv) 503 River Road East, Wasaga Beach

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 D4/95 and is prepared to proceed with a hearing of this matter on Tuesday, 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 D4/95 and this Agreed Statement of Facts with his counsel, D. Kevin Carroll, Q.C. and admits particular 2(a) contained therein.

IV. FACTS

4. The Solicitor, a sole practitioner, was called to the Bar in 1967. He currently practises in Wasaga Beach. The Solicitor operates a general practice, being a combination of Real Estate, Estates and Civil and Criminal Litigation. The Solicitor would testify that, consequently, his work week involved attendances at Provincial Court in Collingwood and Barrie as well as attendances at the Ontario Court (General Division) in Barrie and thus he was absent from his Wasaga Beach office a considerable portion of the work week. In the years 1987 and 1988 he also operated an office in Collingwood which again absented him from the Wasaga Beach office. He would testify that he conducted the business generated from his Wasaga Beach office usually between the hours of 7:30 a.m. and 9:00 a.m. Also, he would testify that if his Court calendar permitted he would attend the Wasaga Beach office towards the end of the business day for the purpose of seeing clients. One of the Solicitor's secretaries, Shirley Hachey, worked out of the Wasaga Beach office.

5. The Solicitor would testify that there began a significant decline in real estate values in 1990 in the Wasaga Beach area.

Particular 2(a) - Conflict of Interest - Frederick McCrudden

6. Frederick McCrudden is 81 years of age and resides in Wasaga Beach. After some discussion with his bank, McCrudden went to the Solicitor's office as he had acted for him previously and spoke to Shirley Hachey about investing in mortgage transactions.

25th January, 1996

7. McCrudden knew that Gaska was a client of the Solicitor and he was told by Shirley Hachey that Gaska was a local builder and would pay a 15% interest rate on financing his projects together with a signing bonus. McCrudden knew this to be a much better interest rate than his bank paid.

8. McCrudden would testify that because he was lending money through a lawyer, he understood that it was the lawyer's responsibility, not his, to ensure the investment would be "safe". McCrudden was aware that if the borrower "reneged", he could re-sell the mortgaged property. McCrudden did not discuss with the Solicitor any of the mortgage loans before making them or the extensions with the exception of the investment in the property known as 503 River Road East, Wasaga Beach. All other discussions with respect to investments were with the Solicitor's secretary Shirley Hachey, who would call McCrudden to attend with cheques or to execute documents, but not to meet with the Solicitor. McCrudden would testify that he assumed that she was acting under the Solicitor's directions. He would also testify that he assumed that the Solicitor was searching title to the properties and if the encumbrances on the property exceeded the value of the property, the Solicitor would advise him not to invest. McCrudden generally did not make formal appointments to see the Solicitor. He simply attended the Solicitor's office at will and spoke to Shirley Hachey or attended at the request of Shirley Hachey in order to sign documents or deliver cheques.

9. In the period from December 1988 to June 1991, the Solicitor acted for Frederick McCrudden as mortgagee in respect of four mortgages. In all of the transactions:

- a. The borrower, mortgagor of the subject property was Heinz Gunter Gaska or a corporation controlled by Gaska.
- b. The Solicitor also acted for Gaska or his companies as mortgagor in the transaction.
- c. The Solicitor failed to advise McCrudden of the Solicitor's conflict of interest in acting for both parties.
- d. The Solicitor failed to recommend that McCrudden obtain independent legal advice or independent legal representation.
- e. The Solicitor failed to provide McCrudden with information as to the quality of his security, such as an appraisal of the property.
- f. The mortgages provided for a short term of one to six months and if extended, were extended for a short term of one to six months.
- g. The interest rates on the mortgages and extensions were at high rates, relative to the bank rate. Bonuses were payable to Mr. McCrudden for the granting and extending the mortgages. The bonuses were payable on maturity.

10. Frederick McCrudden had been a client of the Solicitor on occasion since 1986. The history of the solicitor and client relationship between McCrudden and the Solicitor, is as follows:

- a. In May 1986, the Solicitor acted for McCrudden on transfer of property from McCrudden to his son Gary McCrudden. (Document Book, Tabs 1, 2, and 3)
- b. On June 22, 1987, the Solicitor acted for McCrudden as mortgagee in respect of a mortgage for \$44,500 to McCrudden from Katherine Lynne Stephens and Rita Katz. (Document Book, Tab 4)

- c. On June, 1990, the mortgage from Stephens and Katz to McCrudden came due; the Solicitor, on behalf of McCrudden, arranged an extension of mortgage with the new owners of the property at a new interest rate. (Document Book, Tab 5)
- d. On March 1, 1988, the Solicitor acted for McCrudden as mortgagee in respect of a mortgage from Solicitor's secretary, Shirley Hachey, for \$25,700 (Document Book, Tabs 6, 7, and 8) and sent McCrudden to another solicitor for independent legal advice ("ILA"). McCrudden obtained ILA and provided the financing in spite of advice to the contrary.

Particular 2(a)

i - 168 Main Street, Wasaga Beach, Ontario

11. On May 2, 1988, the Solicitor acted for Gaska (only) on the purchase of property at 168 Main Street, Wasaga Beach (the "Main Street" property) for \$132,000 from third party. The terms of the purchase included a deposit of \$36,000 and a vendor take back first mortgage of \$96,000. The Solicitor prepared all documentation on behalf of Gaska. (Document Book, Tab 9)

12. On December 12, 1988, following a meeting with Shirley Hachey in the Solicitor's office, McCrudden invested in a second mortgage from Gaska for \$25,500 with interest at 15% on the Main Street property. The mortgage was due in full in two months, on February 12, 1989. The Solicitor acted for both McCrudden and Gaska on the transaction. However, no disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest in acting for both parties. The Solicitor did not recommend that McCrudden obtain independent legal advice or independent legal representation ("ILR"). (Document Book, Tabs 10 and 11)

13. On December 28, 1988, the Solicitor provided a certificate of title and report to McCrudden on the Main Street property. (Document Book, Tab 12) The Solicitor established a client ledger card for McCrudden and provided Mr. Gaska with an account for services rendered. (Document Book, Tabs 13 and 14)

14. On February 12, 1989, a five month extension of mortgage was granted by McCrudden following a meeting with Shirley Hachey in the Solicitor's office in which she advised of Gaska's request for an extension. The interest rate remained at 15%. The mortgage was to mature on July 12, 1989. The Solicitor prepared an extension document for Gaska's signature. Again, the Solicitor did not advise McCrudden of the conflict of interest nor did he recommend that McCrudden obtain ILA or ILR. Further extensions of the mortgage at 16% with bonuses were granted from July 14, 1989 to September 17, 1989 and then from September 17, 1989 to December 17, 1989. The Solicitor did not advise McCrudden of the conflict of interest nor did he recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 15)

15. On July 7, 1989, a new first mortgage for \$170,000 was arranged by Gaska on the Main Street property, replacing the first mortgage of \$96,000. The Solicitor acted for Gaska on this new first mortgage. The face value of the new first mortgage exceeded the purchase price of the property. (Document Book, Tab 16) McCrudden agreed to postpone his mortgage interest in exchange for receiving a bonus on maturity. The postponement of McCrudden's interest was limited to the advancement by the first mortgagee of the sum of \$105,000 and any sums advanced thereafter by the first mortgagee would be subject to the payment out of McCrudden's interest. (Document Book, Tab 17)

25th January, 1996

16. By memorandum dated June 3, 1991, Shirley Hachey sought instructions from the Solicitor with respect to the refinancing of the property, in particular, whether McCrudden's security on the laundromat could be increased to accommodate the request for additional financing by Gaska. The Solicitor instructed her to deny Gaska's request. (Document Book, Tab 18)

17. On June 21, 1991, the Solicitor commenced power of sale proceedings on behalf of McCrudden against Gaska as a result of Gaska's default on McCrudden's second mortgage on the Main Street property. (Document Book, Tab 19)

18. The property was eventually sold by the first mortgagee. The funds from sale were insufficient to pay McCrudden. McCrudden's loss on this investment including interest is \$30,631.91. He did not receive any bonuses.

Particular 2(a)

ii - 224 Weir Street, Stayner, Ontario

19. On August 15, 1989, following a meeting with Shirley Hachey in the Solicitor's office in which she advised of Gaska's request for financing, McCrudden advanced \$41,000 to Gaska's company for a second mortgage on the property at 224 Weir Street, Stayner ("Weir Street"). The terms of the mortgage included, a 3 month term, an interest rate of 17% with principal and interest payable on maturity. The mortgage documents were prepared by the Solicitor. The Solicitor acted for both parties. No disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest in acting for both parties. The Solicitor did not recommend that McCrudden obtain ILA or ILR. (Document Book, Tabs 20 and 21)

20. On November 15, 1989, McCrudden's second mortgage matured and was extended four months with bonus of \$500 to be paid on maturity. McCrudden agreed to extend the mortgage for a bonus. Again, no disclosure was made to McCrudden by the Solicitor as to the Solicitor's conflict of interest. The Solicitor did not recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 22)

21. On March 15, 1990, the mortgage matured. No payment was made by Gaska. Following a meeting with Shirley Hachey in the Solicitor's office in which she advised of Gaska's request for an extension, the mortgage was extended a further four months to July 15, 1990 with a further bonus of \$500 to be paid on maturity. McCrudden was not advised of his option to enforce the mortgage. Again, no disclosure was made to McCrudden of the Solicitor's conflict of interest, nor did the Solicitor recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 23)

22. On October 15, 1990, Gaska entered into an agreement to sell property.

23. The Solicitor's file includes a letter dated October 19, 1990, from the Solicitor to McCrudden in which the Solicitor advises McCrudden of his options as Gaska was in arrears on the mortgage. (Document Book, Tab 24) McCrudden would testify that he never received the letter of October 19, 1990. Shirley Hachey would testify that the letter would have been sent by ordinary mail since there are no mailing instructions on it. McCrudden would testify that he learned of the sale of the Weir Street property after the fact. The Solicitor's file includes a mortgage statement dated October 19, 1990 in which the balance owing on the mortgage is calculated. (Document Book, Tab 25)

24. The letter of October 19, 1990 advises McCrudden of the sale of the property and confirms to McCrudden that there would not be sufficient funds to pay out the McCrudden mortgage entirely from the sale. In the letter the Solicitor suggests to McCrudden that he give a full discharge of Weir Street mortgage and transfer the balance of the mortgage (\$34,300) to a third mortgage on another property owned by Gaska. McCrudden would testify that he was not certain of the documents which he signed at the Solicitor's office. This other

25th January, 1996

property was the laundromat at 168 Main Street referred to in particular 2(a)(i) of the Complaint herein. In the October 19, 1990 letter, the Solicitor confirmed that McCrudden already had a second mortgage on the laundromat which was in default. The letter suggests commencing power of sale proceedings on the laundromat. In recommending to McCrudden that he give the discharge of mortgage, the Solicitor preferred the interests of Gaska over the interests of McCrudden. No disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest in acting for both parties. The Solicitor did not recommend that McCrudden obtain ILA or ILR.

25. The discharge of the mortgage was provided. The Solicitor's ledger for Gaska and the Weir Street property indicates that a cheque was written to McCrudden in the amount of \$13,534.48 from the sale of the property. The balance outstanding on the mortgage (\$34,300) was transferred to a third mortgage on the Avening property referred to below. (Document Book, Tab 26)

Particular 2(a)

iii - Part South half Lot 2, Concession 2, Township of Nottawasaga, (Avening)

26. On October 26, 1990, following a meeting with Shirley Hachey in which she advised of Gaska's request for financing, McCrudden was given a third mortgage of \$34,300 from Gaska on the Avening property. McCrudden would testify that he did not understand at the time that he was receiving a third mortgage. The mortgage was for \$34,300, the amount owing to McCrudden after sale of Weir Street property referred to in paragraphs 23 through 25. The terms of the mortgage included an interest rate of 17%, a term of 2 months, and a provision that both principal and interest would be due on maturity, on December 26, 1990. (Document Book, Tab 27)

27. The Solicitor acted for both McCrudden and Gaska on the third mortgage on the Avening property. Again, no disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest. The Solicitor did not recommend that McCrudden obtain ILA or ILR.

28. On November 12, 1990, the Solicitor provided a certificate of title and report to McCrudden on the Avening property. (Document Book, Tab 28)

29. On March 28, 1991, the Solicitor commenced Power of Sale proceedings on behalf of McCrudden against Gaska in respect of the default on the Avening mortgage. Again, no disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest. Again, the Solicitor failed to recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 29)

30. In May 1991, the Solicitor continued to act on McCrudden's behalf in the power of sale proceedings by corresponding with a real estate agent regarding an offer on the property. (Document Book, Tab 30)

31. The Solicitor also acted on behalf of McCrudden in foreclosure proceedings commenced by the first mortgagee. (Document Book, Tabs 31-33)

32. The property was sold by the prior mortgagee. McCrudden's loss on the investment including interest is \$38,580.48.

Particular 2(a)
iv - 503 River Road, Wasaga Beach, Ontario

33. On March 2, 1989, following a meeting with Shirley Hachey in the Solicitor's office in which she advised of Gaska's request for financing, McCrudden accepted a second mortgage from Gaska on a property at 503 River Road, Wasaga Beach. McCrudden advanced \$35,000.00 to Gaska. The mortgage provided for a \$1,000.00 bonus and, accordingly, had a face value of \$36,000.00. The terms of the mortgage included an interest rate of 16% and a term of six months, maturing on September 3, 1989. The Solicitor acted for both McCrudden and Gaska on the transaction. No disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict in interest. The Solicitor did not recommend that McCrudden obtain ILA or ILR. (Document Book, Tabs 34-36)

34. The Solicitor provided McCrudden with a certificate of title. (Document Book, Tab 37)

35. On September 3, 1989, the mortgage was due. Even though no payments had been made, McCrudden agreed to extend the mortgage for one month for bonus of \$100, payable on maturity. The mortgage extension document was drawn by Shirley Hachey and not the Solicitor. At this time, to McCrudden's detriment and Gaska's benefit, the Solicitor did not advise McCrudden of his option to enforce the mortgage against Gaska. No disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict in interest. Again, the Solicitor did not recommend that McCrudden obtain ILA or ILR; however, McCrudden did not meet with the Solicitor. (Document Book, Tab 38)

36. On October 3, 1989, the mortgage came due; no payments had been made. The mortgage was extended to March 15, 1990 for bonus of \$700 payable on March 15, 1990. The mortgage extension document was drawn by Shirley Hachey and not the Solicitor. At this time, to McCrudden's detriment and Gaska's benefit, the Solicitor did not advise McCrudden of his option to enforce the mortgage. The Solicitor acted for both McCrudden and Gaska on the extension. No disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest. The Solicitor did not recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 39)

37. In July 1990, Gaska transferred the property to his spouse for \$2 and the assumption of the \$130,000 first mortgage. The transfer document was prepared and registered by the Solicitor. The Solicitor did not inform McCrudden of the transfer even though it was a term of McCrudden's mortgage that it was due upon transfer of title. At that time, no disclosure was made to McCrudden by the Solicitor regarding the Solicitor's conflict of interest in acting for both parties. The Solicitor did not recommend that McCrudden obtain ILA or ILR. (Document Book, Tab 40)

38. On April 26, 1991, the Solicitor represented McCrudden in power of sale proceedings against Gaska in respect of the property. The property sold for \$126,000 and the necessary documents were prepared and registered by the Solicitor. (Document Book, Tabs 41-43)

39. After payment of legal costs of the sale, totalling \$1,336.75, and adjustments, McCrudden received \$8,320.19 from the sale. McCrudden's loss on investment including interest is \$35,219.25.

40. McCrudden's total loss on the transactions referred to in particular 2(a) of the Complaint is approximately \$104,431.64.

V. DISCIPLINE HISTORY

41. The Solicitor does not have a discipline record.

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

Finding of Misconduct

There shall be a finding of misconduct as admitted regarding the complaint in subparagraph (a) only as the misconduct in subparagraphs (b), (c) and (d) have been withdrawn at the request of the Society.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Maurice Alfred Loton be reprimanded in Convocation and pay costs of the Law Society in the amount of \$7,392.05 and be required to sign an undertaking that he will never again act for both sides in any transaction whatsoever.

REASONS FOR RECOMMENDATION

1. Both counsel jointly recommended to the Committee that an appropriate range of penalty is between one month's suspension and a reprimand in Convocation. Obviously, counsel for the Society seeks the high end of the penalty range and counsel for the Solicitor seeks the lower end of the range. It should be noted that the Solicitor's counsel agrees that costs of the Society may be fixed at \$7,392.05 and payable by the Solicitor to the Society.
2. The Committee has seriously grappled with the alternatives in the range and has considered the filed materials and Book of Authorities referred to.
3. The mitigating factors to be considered are:
 - (a) The Solicitor was called to the Bar in 1967;
 - (b) The Solicitor practised the majority of his time as a sole practitioner in a smaller community;
 - (c) The Solicitor admits the misconduct;
 - (d) The Solicitor has co-operated with the Society and this proceeding;
 - (e) There is no doubt of the penitence of the Solicitor;
 - (f) The Solicitor is generally held in high esteem in his community;
 - (g) The Solicitor has produced positive reference letters from colleagues;
 - (h) Of significant note was the attendance of the person aggrieved by the misconduct, Mr. McCrudden and his counsel, who did not oppose the recommendation for reprimand in Convocation;
 - (i) The Solicitor has no prior discipline history;
 - (j) There is no dishonesty found in the misconduct;
 - (k) There is no personal gain by the Solicitor;
 - (l) The Practice Review reports indicate a finding that the operation of the office of the Solicitor lacks effective discipline and control, both in the Solicitor and his control over staff;
 - (m) The Solicitor has co-operated with the Practice Review investigation and recommendations and is continuing in that vein.

4. The aggravating factors can be identified as follows:
 - (a) There is over \$70,000.00 lost to Mr. McCrudden that is yet unsatisfied;
 - (b) The Solicitor admits the flagrant breach of Rule 5 of the Rules of Professional Conduct dealing with conflict of interest situations;
 - (c) The Solicitor admitted failure to recommend Mr. McCrudden to independent legal advice or independent legal representation;
 - (d) The Solicitor failed to supervise his staff properly;
 - (e) The Solicitor failed to protect the interests of one client over another once the conflict situation arose.
5. After much consideration, this Committee has determined that the recommendation to Convocation shall be for a penalty in the lower end of the range submitted.
6. Although the Committee is seriously concerned with the breach of Rule 5 of the Rules of Professional Conduct and other aggravating factors set out above, the Committee is particularly impressed with the mitigating factors also set out above. Of particular note are the mitigating factors of no prior discipline history, no dishonesty inherent in the dealings, no personal gain to the Solicitor, and the Solicitor's adherence to the recommendations of the Practice Review investigation and his continued involvement in Practice Review programmes and implementation.
7. Counsel for the Solicitor noted four factors which should be addressed in assessing penalty.
 - (a) Firstly, will there be a continuation of the conduct complained of? In this case the Committee is impressed with the personal assurances given in testimony by the Solicitor that he will never act again in a conflict of interest situation. As well, his continued involvement with the Practice Review and the implementation of those procedures, provides further insurance.
 - (b) Secondly, it is queried whether or not the Solicitor acted with integrity. In this case, there was no personal gain and Mr. McCrudden admitted in his testimony that he knew from the beginning that Mr. Gaska was also a client of the Solicitor.
 - (c) Thirdly, was there a need for general deterrence? Although general deterrence is important, the Committee feels that those principles can be met by the reprimand in Convocation, especially considering the facts of the case.
 - (d) Fourthly, will the penalty be sufficient to satisfy the public interest? The Committee is of the view that the penalty herein, being a reprimand in Convocation, will be sufficient to satisfy the public interest. At this point, it should be noted again that Mr. McCrudden did not object to the recommendation for a reprimand in Convocation. As well, it is also noted that such reprimand is still public and the embarrassment that the Solicitor will experience in his own smaller community, will more than satisfy the public interest in this matter.

25th January, 1996

Maurice Alfred Loton was called to the Bar on the 17th day of March, 1967.

ALL OF WHICH is respectfully submitted

DATED this 25th day of October, 1995

Gerald A. Swaye, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded and pay costs in the amount of \$7,392.05 and sign an undertaking that he would never act for both sides in any transaction.

Mr. Hately made submissions on the terms of the undertaking and asked that the solicitor have a year in which to pay costs.

Counsel for the Society did not object to the request.

There were questions from the Bench.

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

It was moved by Mr. Strosberg, seconded by Ms. Ross that the wording of the undertaking read that the solicitor will never in any matter act for parties who are adverse in interest, for example a vendor and purchaser except however if one such party is a bank, trust company, credit union or similar financial institution giving a mortgage loan in the matter.

The Strosberg/Ross motion was further amended to allow the solicitor 1 year to pay the Society's costs.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision, that the wording of the undertaking read that the solicitor never in any matter act for parties who are adverse in interest except if one such party is a bank, trust company, credit union or similar financial institution giving a mortgage loan in the matter and in addition that the solicitor be given 1 year to pay the Society's costs.

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Re: Anthony Chris BAZOS (cont'd)

Counsel for the Society and the solicitor returned to Convocation asking for clarification of the Undertaking requirements.

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

It was moved by Mr. Marrocco, seconded by Mr. Crowe that paragraph 3 of the Undertaking be deleted and the attachment be removed.

Carried

25th January, 1996

It was moved by Mr. Strosberg, seconded by Ms. Carpenter-Gunn that paragraphs (h) and (i) be deleted.

Not Put

Mr. Arnup did not participate or vote.

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that paragraph 3 be deleted and the attachment removed.

Paragraph 1 of the Undertaking was also amended to delete the words "Senior Counsel-Discipline" and insert the word "Secretary".

The solicitor signed the amended Undertaking and the Complaint was dismissed.

Counsel and solicitor retired.

Re: Irene STICH - London

The Secretary placed the matter before Convocation.

Messrs. Topp and Manes and Ms. O'Connor withdrew for this matter.

Mr. Scott did not participate.

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

Ms. Brooks advised Convocation that the solicitor had not complied with the Order of Convocation dated October 27, 1995 which read:

"Convocation hereby orders that should Irene Stich comply with her Undertaking to the Law Society by December 31, 1995 that she be suspended for a period of twelve months, failing which, that she be disbarred."

The following material was entered as Exhibits:

Exhibit 3. Letter from the solicitor dated October 27, 1995 to Ms. Janet Brooks;

Exhibit 4. Factum of the Law Society;

Exhibit 5. Record Book and further Evidence tendered by the Law Society.

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

Carried

Counsel retired.

Re: Michele Marie MEAKES - Toronto

The Secretary placed the matter before Convocation.

Mr. Strosberg, Ms. Harvey and Ms. O'Connor withdrew for this matter.

Mr. Scott did not participate.

25th January, 1996

Ms. Cameron 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 12th October, 1995, together with an Affidavit of Service sworn 21st November, 1995 by Ronald Hoppie that he had effected service on the solicitor by registered mail on 3rd November, 1995 (marked Exhibit 1) together with an Affidavit of Attempted Service sworn January, 1996 by James Gooding that he had attempted to serve the solicitor on 8th and 23rd, December, 1995 (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

Leslie Cameron
for the Society

MICHELE MARIE MEAKES
of the City
of Toronto
a barrister and solicitor

Not Represented
for the solciitor

Heard: June 27, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 28, 1994, Complaint D172/94 was issued and on January 18, 1995, Complaint D448/94 was issued against Michele Marie Meakes alleging that she was guilty of professional misconduct.

The matter was heard in public on June 27, 1995 before this Committee composed of Thomas J.P. Carey, Chair, Jane Harvey and Shirley O'Connor. Ms. Meakes was not present at the hearing nor was she represented. Leslie Cameron appeared on behalf of the Law Society.

DECISION

Complaint D172/94

2. (a) she failed to file with the Society within six months of the termination of her fiscal year ending January 31, 1993, a statutory declaration in the form prescribe by the Rules and a report completed by a public accountant and signed by the

25th January, 1996

member in the form prescribed by the Rules thereby contravening Section 16(2) of Regulation 708 made pursuant to the Law Society Act.

Complaint D448/94

2. (a) She failed to file with the Law Society within six months of the termination of her fiscal year ending January 31, 1994, 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;

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Committee was satisfied that the Solicitor had been duly served.

The Committee accepted the uncontradicted evidence of Irene Andrighetti in this matter that the Solicitor failed to file for the year end January 31, 1993 and January 31, 1994 in accordance with her obligation and that the complaint was made out on convincing evidence.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Michele Marie Meakes be reprimanded in Convocation if all her filings are made before such time as her appearance in Convocation, and failing that, the Solicitor be suspended for a month and from month to month thereafter until the filings are made.

REASONS FOR RECOMMENDATION

There are two filings not made. The Solicitor has not appeared before the Committee and has not been in regular communication with the Society and there must be a message brought home to this Solicitor and to the profession at large that the Society views very seriously the non-compliance with its regulations and that the Society expects, absent exceptional circumstances that solicitors will comply with those regulations, including filings and they will appear before the Society to explain their actions when called to do so.

The decision that there not be costs arises in part from the Society's position that costs not be awarded and from the Committee's feeling that where there are financial problems to the satisfaction of the Society, that it is not appropriate to further impose a financial penalty on the Solicitor.

Michele Marie Meakes was called to the Bar on the 7th day of April, 1983.

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1995

Thomas J.P. Carey
Chair

25th January, 1996

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded in Convocation if her filings were completed, failing that, the solicitor be suspended for a period of 1 month and from month to month thereafter until the filings were completed.

Ms. Cameron advised that the solicitor's filings had not been completed and made submissions in support of the suspension to commence at the end of the current suspension.

Counsel, the reporter and the public withdrew.

It was moved by Mr. Topp, seconded by Ms. Backhouse that the solicitor be suspended for a period of 1 month and month to month thereafter, the suspension to be concurrent with her current administrative suspension.

Carried

Counsel, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be suspended for 1 month and month to month thereafter, the suspension to be concurrent with any administrative suspension.

Counsel retired.

Re: Stanley UDELL - Richmond Hill

The Secretary placed the matter before Convocation.

Messrs. Topp and Marrocco, Ms. Sachs and Ms. Sealy withdrew.

Mr. Scott did not participate.

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

Convocation had before it the Report of the Discipline Committee dated 24th November, 1995, together with an Affidavit of Service sworn 5th January, 1996 by Louis Katholos that he had effected service on the solicitor by registered mail on 8th December, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 13th December, 1995 (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
Harriet Sachs
Hope Sealy

25th January, 1996

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

Neil J. Perrier
for the Society

STANLEY UDELL
of the Town
of Richmond Hill
a barrister and solicitor

Alan S. Price
for the solicitor

Heard: October 17, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 30, 1995 Complaint D85/95 was issued against Stanley Udell alleging that he was guilty of professional misconduct.

The matter was heard in public on October 17, 1995 before this Committee comprising Frank Marrocco, Chair, Harriet Sachs and Hope Sealy. The Solicitor attended the hearing and was represented by Alan Price. Neil Perrier appeared on behalf of the Law Society.

DECISION

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

Complaint D85/95

2. a) He failed to render an appropriate level of professional service to his client John Curtis in connection with a mortgage investment in that he:
 - i) failed to conduct appropriate searches or take other steps to ensure that the mortgage was registered as a first mortgage;
 - ii) improperly delegated his responsibilities as a solicitor to Southview Investments Inc., a company involved in arranging the said mortgage, without advising or seeking the consent of his client;
 - iii) failed to properly report on the transaction.
- b) He provided the aforementioned Southview Investments Inc. with blank copies of his letterhead so that they could prepare a report to his client in connection with the said transaction.
- c) He signed a letter dated April 13, 1992 prepared by the aforementioned Southview Investments Inc. purporting to report on the registration of a first mortgage without first informing himself as to the accuracy of the contents of the said letter.

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 D85/95 and is prepared to proceed with a hearing of this matter on October 17 and 18, 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 D85/95 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. FACTS

4. The Solicitor is 50 years of age. He was called to the Bar on March 26, 1971. The Solicitor gave an Undertaking not to practice to the Society on July 24, 1995. The Solicitor has co-operated fully with the Law Society's investigation and prosecution of this matter.

5. In or about April of 1992, John Curtis, had contact with the Solicitor regarding repayment of a mortgage investment in which the Solicitor acted for the borrower. The mortgage investment having been repaid, the Solicitor approached Mr. Curtis and advised him of the possibility of making another mortgage investment. Mr. Curtis was content to retain the Solicitor to act for him in regard to one of the mortgage opportunities presented to him.

6. By way of background, the opportunity that the Solicitor presented to Mr. Curtis had been presented to him, the Solicitor, by a fellow solicitor, Morris Orzech, with whom the Solicitor had been acquainted for approximately 20 years. Mr. Orzech introduced the Solicitor to one Janice Raven who was operating a mortgage brokerage company named Southview Investments Inc. ("Southview"). Mr. Orzech is presently the subject of an outstanding Complaint by the Law Society. A subsequent investigation has revealed that Janice Raven was not licensed to carry on business as a mortgage broker. Southview has now gone bankrupt leaving a substantial number of bad and suspect investments.

7. The information respecting Southview set out in paragraph 6 above was not known to the Solicitor at the time of Mr. Curtis' investment with Southview.

8. The Solicitor described the potential investment in a property known municipally as 103 Holmcrest Trail, Scarborough to Mr. Curtis. The Solicitor explained to Mr. Curtis that Southview administered the property on behalf of the owners and that it had a first mortgage in the sum of \$300,000.00 on the property which would be postponed in favour of Mr. Curtis' mortgage. The Solicitor provided Mr. Curtis with information about the particulars of the mortgage that had been provided to him by Ms. Raven. Mr. Curtis did attend at the property to view it prior to advancing funds.

25th January, 1996

9. On April 13, 1992, Mr. Curtis delivered a certified cheque in the sum of \$140,000.00 to the Solicitor's office. The cheque representing the mortgage investment funds was made payable to the Solicitor in trust. At the time of Mr. Curtis' attendance, the Solicitor arranged for Ms. Raven to attend at his office as well which she did along with Mr. Orzech.

10. In or about the time during which the Curtis mortgage investment was being discussed between the Solicitor and Janice Raven, the Solicitor provided Ms. Raven with several pieces of his letterhead paper. It was agreed between Ms. Raven and the Solicitor that Mr. Orzech would act as the Solicitor's agent in the closing of this transaction. It was further agreed that either Ms. Raven or Mr. Orzech would prepare a reporting letter on behalf of the Solicitor to Mr. Curtis. The Solicitor never advised Mr. Curtis that Mr. Orzech would be acting as his agent in this matter to register the mortgage. The Solicitor acknowledges that this was important particularly in view of the fact that Mr. Orzech was acting for Ms. Raven in this transaction and that Mr. Orzech's acting as agent for the Solicitor for the lender resulted in a conflict of interest.

11. At the time the transaction was completed Morris Orzech gave an undertaking to discharge the Toronto-Dominion Bank mortgage. A review of the abstract of title indicates that as at closing there was a first mortgage which had been assigned to the Toronto-Dominion Bank. As at the day that the undertaking was given this was the only mortgage held by the Toronto-Dominion Bank and it was a first mortgage. Had this mortgage been discharged at the time it should have been, the Curtis mortgage would have become a first mortgage.

12. On April 13, 1992, Janice Raven prepared three letters regarding this transaction, one to Mr. and Mrs. Curtis on her own behalf, one to Mr. and Mrs. Curtis on behalf of the Solicitor on his letterhead and one to the Solicitor. Copies of these letters are attached collectively as Exhibit 1 to this agreed statement of facts.

13. In or about late April 1992, the Solicitor had a conversation with Ms. Raven following receipt of a copy of the search and search notes on the property regarding the fact that the Curtis mortgage was not registered as a first. Ms. Raven assured the Solicitor that the existing first would be paid out shortly and that the Curtis mortgage would move into first position. By letter dated April 27, 1992, from Ms. Raven to the Solicitor, a copy of which is attached as Exhibit 2 to this agreed statement of facts, Ms. Raven confirmed this advice.

14. Throughout the Spring of 1992, the Solicitor questioned Ms. Raven about the discharge of the prior mortgage. On each occasion, he was assured that a discharge would be received shortly and the Curtis mortgage would move up to first place. The Solicitor would give evidence that Ms. Raven advised him that she had discussed this arrangement with Mr. Curtis and that he was content with it. The Solicitor did not contact Mr. Curtis himself explaining "I could only assume that if I didn't hear from Mr. Curtis everything was as stated". The Solicitor now admits that immediately upon learning of the Undertaking rather than an actual discharge being given he should have advised his client, Mr. Curtis of the circumstances. The Solicitor also admits that if in his judgment it was not necessary to advise Mr. Curtis of the aforesaid immediately that he should have contacted Mr. Curtis to confirm the information given by Janice Raven of Mr. Curtis' knowledge that this mortgage was in second place as time passed.

15. The Solicitor never sent Mr. Curtis the final reporting letter.

16. By letter dated June 17, 1992, Ms. Raven reported to the Solicitor that the prior encumbrance being the Toronto Dominion Bank mortgage had been discharged. A copy of Ms. Raven's June 17, 1992 letter is attached as Exhibit 3 to this agreed statement of facts.

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17. Unbeknownst to either Mr. Curtis or the Solicitor, Mr. Curtis' mortgage on 103 Holmcrest Trail was discharged on August 24, 1992 on or about the date that the first Toronto Dominion Bank mortgage was discharged. On August 19, 1992 a further mortgage in favour of the Toronto Dominion Bank was registered on the property. It was not until March of 1993 that a new mortgage in favour of Southview in trust, for Mr. Curtis was also registered on the property.

18. The Solicitor did not seek discharge particulars of the Toronto Dominion Bank mortgage from Mr. Orzech until he did so by way of letter dated November 24, 1993, a copy of which is attached as Exhibit 4 to this agreed statement of facts.

19. From the outset, Mr. Curtis experienced difficulty in receiving mortgage payments and the Solicitor had various conversations with Janice Raven and Mr. Orzech attempting to rectify matters such that Mr. Curtis indeed has a mortgage which is on first position to the property. Again, throughout this process, the Solicitor never advised Mr. Curtis that the investment was a second, and not a first, mortgage, the Solicitor would testify that this was because he was relying on Mr. Orzech's undertaking.

20. When the mortgage went into arrears, Mr. Curtis attempted to contact Ms. Raven directly but stated that he was unable to do so. Ms. Raven informed the Solicitor that she had given Mr. Curtis replacement cheques and other assurances regarding payment.

21. A copy of the title search showing the trail of mortgages and discharges on 103 Holmcrest Trail property is attached as Exhibit 5 to this agreed statement of facts.

22. Mr. Curtis complained to the Law Society about the Solicitor's conduct in regard to this transaction by letter dated June 9, 1994, a copy of which is attached as Exhibit 6 to this agreed statement of facts.

23. The Solicitor responded by letter dated July 29, 1994, a copy of which is attached as Exhibit 7 to this agreed statement of facts.

24. At the request of the Law Society the Solicitor prepared a further letter dated December 15, 1994 providing additional information respecting his conduct in regard to this transaction. A copy of the Solicitor's December 15, 1994 letter is attached as Exhibit 8 to this agreed statement of facts.

V. PRIOR DISCIPLINE

18. The Solicitor has no prior Discipline history.

DATED at Toronto this 17th day of October, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Stanley Udell be Reprimanded in Convocation and pay Law Society costs in the amount of \$1,000 within six months of the date this matter is considered by Convocation.

REASONS FOR RECOMMENDATION

The Committee accepts the joint recommendation of counsel and recommends that Stanley Udell be reprimanded in Convocation. Mr. Udell will compensate the Law Society for its costs in the amount of \$1,000 payable within six months of being reprimanded.

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The Committee might very well have recommended a more severe penalty had it not been for the following facts: First of all, Mr. Udell cooperated fully with the Law Society; secondly, this penalty was jointly recommended by both counsel; thirdly, the Committee was mindful of the fact that Mr. Udell was a member of the Bar for twenty-four years with no prior discipline record; and fourthly, Mr. Udell had no interest in the transaction and doesn't appear to have been compensated for his services in any way.

In addition, it appears that Mr. Udell was, by virtue of his previous relationship with Mr. Orzech, lulled into a false sense of security. He relied excessively and unreasonably on Mr. Orzech - a person whom he had known for more than twenty years, a person for whom he had worked for a short period of time and a person with whom he had had one previous uneventful professional dealing.

Bearing in mind all those facts and taking into consideration the fact that Mr. Udell is not practising law and appears to have retired from the practice of law, the Committee has decided to accept the joint recommendation.

Stanley Udell was called to the Bar on the 26th day of March, 1971.

ALL OF WHICH is respectfully submitted

DATED this 24th day of November, 1995

Frank Marrocco
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be reprimanded and pay costs in the amount of \$1,000 to be paid within 6 months.

Both counsel made brief submissions in support of the recommended penalty.

It was moved by Mr. Strosberg, seconded by Ms. Ross that the recommended penalty be adopted.

Carried

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Re: Fredrick Blake KENWELL (cont'd)

Convocation had before it the Report of the Discipline Committee dated 15th November, 1995, together with an Affidavit of Service sworn 1st December, 1995 by Louis Katholos that he effected service on the solicitor by registered mail on 29th November, 1995 (marked Exhibit 1), together with an Affidavit of Attempted Service sworn 27th December, 1995 by James Gooding that he had attempted to serve the solicitor on 9th and 12th December, 1995 (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:

25th January, 1996

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

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

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

Kate Wootton
for the Society

FREDRICK BLAKE KENWELL
of the City
of Toronto
a barrister and solicitor

Norman Panzica
for the solicitor

Heard: June 27, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On January 18, 1995, Complaint D467/94 was issued and on February 21, 1995, Complaint D491/94 was issued against Fredrick Blake Kenwell alleging that he was guilty of professional misconduct.

The matter was heard in public on June 27, 1995 before this Committee composed of Thomas J.P. Carey, Chair, Shirley O'Connor and Jane Harvey. The Solicitor was present at the hearing and was represented by Norman Panzica. Kate Wootton appeared on behalf of the Law Society.

DECISION

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

Complaint D467/94

- a) He failed to file with the Society within six months of the termination of his fiscal year ending March 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;

Complaint D491/94

- a) He has breached an Order of Convocation by continuing to practise while under suspension during the period December 1st, 1992 until March 16th, 1993;

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- b) He has breached an Order of Convocation by continuing to practise while under suspension during the period April 23rd, 1993 until September 15th, 1993;
- c) He failed to maintain sufficient trust funds contrary to section 14(12) of Regulation 708 of the Law Society Act;
- d) He failed to maintain books and records in accordance with the provisions of Sections 14 and 15 of Regulation 708 made pursuant to the Law Society Act.

Evidence

Part of the evidence before the Committee contained the following Agreed Statements of Fact:

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D467/94 and is prepared to proceed with a hearing of this matter June 27 and 28, 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 D467/94, together with his counsel Norman Panzica, 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 19, 1991. He practices as a sole practitioner. He has been administratively suspended since May 26, 1995 for non-payment of his errors and omissions levy.

5. The Solicitor's fiscal year end is March 31st. The Solicitor did not file his Form 2 or Form 3 within six months of the fiscal year ending March 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 October 5, 1994 was received by the Solicitor from the Law Society. A copy of the Notice is attached as Exhibit "A" to this Agreed Statement of Facts.

7. By registered mail, the Solicitor received a Second Notice of Default in Annual Filing dated November 7, 1994 from the Law Society. 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. 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 Section 36 of the Law Society Act. The Solicitor was

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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 Law Society's Second Notice was signed for and delivered on November 10, 1994. A copy of the Society's Second Notice and the Acknowledgement of Receipt Card are attached as Exhibit "B" to this Agreed Statement of Facts. The Solicitor did not respond to this correspondence.

8. A late filing fee of \$1,500.00 remains outstanding.

9. As a Form 3 is a report of a public accountant respecting the compliance of the Solicitor's books and records with the regulations, the Society has no way of verifying that the Solicitor is maintaining books and records save for arranging for an audit examiner to attend at the Solicitor's practice thereby substantially increasing the costs of the audit branch.

10. To date, the Solicitor has not filed for the fiscal year ended March 31, 1994.

V. DISCIPLINE HISTORY

11. The Solicitor does not have a discipline history.

DATED at Toronto this 27 day of June, 1995."

"AGREED STATEMENT OF FACTS"

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D491/94 and is prepared to proceed with a hearing of this matter on June 27 and 28, 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 D491/94, together with his counsel Norman Panzica, 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 19, 1991. He practices as a sole practitioner in Toronto. The Solicitor has been administratively suspended since May 26, 1995 for non-payment of his errors and omissions levy.

Particular 2(a) Practising while suspended between December 1, 1992 and March 16, 1993

5. On or about July 13, 1992 (Tab 1, Document Book), the Law Society delivered to the Solicitor a Notice advising him that his Annual Fees were due and payable on August 1, 1992. The Solicitor was advised that if payment was not received within the required time period, he may be suspended.

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6. On or about October 13, 1992 (Tab 2, Document Book), the Law Society delivered to the Solicitor a Second Notice advising him that his Annual Fees were due and payable on August 1, 1992. The Solicitor was advised that if payment was not received within the required time period, he may be suspended.

7. On or about November 16, 1992 (Tab 3, Document Book), the Law Society delivered to the Solicitor a Final Notice advising him that his Annual Fees were due and payable on August 1, 1992. The Solicitor was advised that if payment was not received within the required time period, he may be suspended.

8. By registered mail dated December 2, 1992 (Tab 4, Document Book), the Solicitor was advised that his rights and privileges as a member of the Society had been suspended effective December 1, 1992 for failure to pay his annual fees.

9. By letter dated March 16, 1993 (Tab 5, Document Book), the Law Society acknowledged receipt of the Solicitor's cheque for his annual fees. The Solicitor was advised that his suspension was terminated on March 15, 1993, the day his payment was received.

10. The following documents were obtained during the course of a Law Society audit which establish that the Solicitor practised during the period from December 1, 1992 to March 16, 1993 when he was suspended for non-payment of his annual fees:

- i. Solicitor's Legal Aid account dated February 22, 1993 re: client, Myers, showing the Solicitor travelled between December 7, 1992 to January 10, 1993; (Tab 6, Document Book)
- ii. Solicitor's Legal Aid account dated February 22, 1993 re: client, McInroy, showing the Solicitor attended on trial on December 8, 1992; (Tab 7, Document Book)
- iii. Solicitor's Legal Aid account dated April 6, 1993 re: client, Spizzico, showing the Solicitor attended at trial on December 15, 1992; (Tab 8, Document Book)
- iv. Solicitor's Legal Aid account dated April 6, 1993 re: client, Poirrier, showing Solicitor attended at a bail hearing on January 7, 1993; (Tab 9, Document Book)
- v. Solicitor's Legal Aid account dated May 4, 1993 re: client, Bal, showing Solicitor attended court for sentencing on February 9, 1993; (Tab 10, Document Book)
- vi. Solicitor's Legal Aid account dated April 6, 1993 re: client, Gale, showing Solicitor attended pre-trial on February 16, 1993 and travelled to and from Newmarket between February 16, 1993 and March 4, 1993; (Tab 11, Document Book)
- vii. Solicitor's Legal Aid account re: client, Bun, showing Solicitor attended at trial on March 10, 1993; (Tab 12, Document Book)
- viii. Solicitor's Legal Aid account dated April 7, 1993 re: client, Rzezoter, showing Solicitor attended trial on March 10, 1993; (Tab 13, Document Book).

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Particular 2(b) Practising while suspended between April 23, 1993 to September 15, 1993

11. A Notice of Default in Annual Filing, dated October 6, 1992 was received by the Solicitor from the Law Society. (Tab 14, Document Book)

12. By registered mail dated November 9, 1992 (Tab 15, Document Book), 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. 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 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.

13. The late filing fee began to accrue on November 24, 1992.

14. By registered mail, the Law Society forwarded to the Solicitor a Third Notice of Default in Annual Filing, dated March 26, 1993 (Tab 16, Document Book). The Solicitor was advised that his name would go before Convocation on April 23, 1993 for suspension of his rights and privileges should his late filing fee remain unpaid as of 5:00 p.m. on April 22, 1993. 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.

15. By letter dated April 13, 1993 (Tab 17, Document Book), the Law Society advised the Solicitor that his annual filing and late filing levy had not been received. The Solicitor was reminded that his name would go before Convocation, for suspension of her rights and privileges, on April 23, 1993 should payment not be received by April 22, 1993.

16. By registered letter dated April 27, 1993 (Tab 18, Document Book), the Solicitor was advised that his rights and privileges as a member of the Society were suspended as of April 23, 1993 for failing to pay the late filing fee.

17. On September 15, 1993, the Solicitor paid to the Society \$2,024.00 representing late filing penalties since his call to the Bar. On November 30, 1993, the Law Society received the Solicitor's completed Form 2. On February 9, 1994, the Law Society received the Solicitor's completed Form 3.

18. The following documents were obtained during the course of a Law Society audit which establish that the Solicitor practised during the period from April 23, 1993 to September 15, 1993 when he was suspended for non-payment of his late filing fee:

- i. Solicitor's Legal Aid account dated May 4, 1993 re: client, Garcia, showing Solicitor attended trial on April 23, 1993; (Tab 19, Document Book)
- ii. Solicitor's Legal Aid account dated May 4, 1993 re: client, Gaba, showing Solicitor attended trial on April 30, 1993; (Tab 20, Document Book)
- iii. Solicitor's Legal Aid account dated May 4, 1993 re: client, Wright, showing Solicitor attended for sentencing on May 4, 1993; (Tab 21, Document Book)

25th January, 1996

- iv. Solicitor's Legal Aid account dated July 2, 1993 re: client, Eshtehar, showing Solicitor prepared for sentencing on June 15, 1993 and attending for sentencing on June 16, 1993 and June 28, 1993; (Tab 22, Document Book)

19. The Solicitor has previously been suspended for non-payment of his Errors and Omissions Levy on two occasions as follows:

- a) June 1, 1992; and
- b) November 2, 1992.

Particular 2(c) and 2(d) Failing to maintain sufficient trust funds and failing to maintain books and records

20. On or about September 2, 1993, Anita McCann, Examiner with the Audit and Investigation Department of the Law Society, attended at the Solicitor's office and reviewed the Solicitor's books and records. The audit revealed that the Solicitor had a trust shortage of \$485.00. As the Solicitor's books and records were two years and three months in arrears, co-signing controls were placed on his trust account.

21. The Law Society's audit further revealed that the Solicitor failed to maintain his books and records as follows:

- a) trust comparisons were in arrears from May 31, 1991;
- b) accounting records generally were in arrears;
 - i) trust journals were in arrears from May 31, 1991;
 - ii) general journals were in arrears from May 31, 1991;
- c) overdrawn trust ledger accounts were permitted to exist uncorrected over periods in excess of one month;
- d) a record of fees billed was not maintained as required by subsection 1(g) of the section 15 of the Regulation;
- e) trust cash receipts record did not always show the full particulars of money received as required by subsection 1(a) of section 15 of the Regulation;
- f) trust cash disbursements records did not always show the full particulars of money received as required by subsection 1(b) of section 15 of the Regulation;
- g) general cash disbursements record did not always show the full particulars as required by subsection 1(f) of section 15 of the Regulation;
- h) inactive trust ledger account existed whose balances had not been reviewed.

V. DISCIPLINE HISTORY

22. The Solicitor does not have a discipline history.

DATED at Toronto this 27TH day of JUNE, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Fredrick Blake Kenwell be suspended for a period of nine months in regards to both Complaints and that if has not made his outstanding filings by the time this matter reaches Convocation, he be suspended indefinitely until such time as those are made.

REASONS FOR RECOMMENDATION

As we calculate the period of practising under suspension as slightly over 8 months, we have added a general deterrence suspension of 30 days to make a total penalty of nine months in accordance with the principles established by Convocation in the McGregor and Laan decisions. The Solicitor has no discipline history and has agreed to the facts constituting the misconduct, saving considerable time and expense to the Society. He is young (30 years old) and had only been called to the Bar 2 years at the time of misconduct. He has taken steps to get his business affairs in order with his new spouse's assistance. It is the Committee's sincere hope that the period of suspension will have a deterrent effect on the Solicitor without crippling his ability to get back on his feet.

Fredrick Blake Kenwell was called to the Bar on the 19th day of March, 1991.

ALL OF WHICH is respectfully submitted

DATED this 15th day of November, 1995

Thomas J.P. Carey
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 9 months with regard to both Complaints and if his filings were not made, he be suspended indefinitely until such time as the filings were made.

Ms. Cowie advised that the solicitor had not made his filings and made submissions in support of the recommended penalty to be served consecutively.

Mr. Panzica concurred.

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

Carried

Counsel retired.

Re: Alan Stanley HARRIES - Peterborough

The Secretary placed the matter before Convocation.

Ms. O'Connor and Ms. Sealy withdrew for this matter.

25th January, 1996

Mr. Scott did not participate.

Mr. Perrier appeared on behalf of the Society and Mr. Harry Black appeared on behalf of the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 31st May, 1995, together with an Affidavit of Service sworn 14th June, 1995 by Louis Katholos that he had effected service on the solicitor by registered mail on 13th June, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th January, 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

Roger D. Yachetti, Q.C., Chair
Daniel J. Murphy, Q.C.
Shirley O'Connor

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

Christina Budweth
for the Society

ALAN STANLEY HARRIES
of the City
of Peterborough
a barrister and solicitor

Not Represented
for the solciitor

Heard: April 4, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On September 2, 1994, Complaint D232/94 was issued against Alan Stanley Harries alleging that he was guilty of professional misconduct.

The matter was heard in public on April 4, 1995 before this Committee composed of Roger D. Yachetti, Q.C., Chair, Daniel J. Murphy, Q.C. and Shirley O'Connor. Mr. Harries was in attendance at the hearing and was not represented by Counsel. Christina Budweth appeared on behalf of the Law Society.

DECISION

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

Complaint 232/94

2. a) He failed to serve his clients, Jackie Aherne and her minor daughter Karen Elizabeth Birse, in a diligent, efficient and professional manner by failing to pursue a law suit on their behalf notwithstanding instructions to do so.
- b) He misled his client, Jackie Aherne, over a period of almost ten years as to the status of her lawsuit.
- c) He failed to provide a reply to the Law Society regarding a complaint by Jackie Aherne despite letters to him, dated March 16, 1994 and April 20, 1994 and telephone messages left for him on April 5, 1994, April 18, 1994 and June 8, 1994.

Evidence

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

"AGREED STATEMENT OF FACTS

I. JURISDICTION AND SERVICE

1. The Solicitor admits service of Complaint D232/94 and is prepared to proceed with a hearing of this matter on a date to be agreed upon.

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 D232/94 and this agreed statement of facts and admits the particulars contained in the Complaint. 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 is 51 years of age. He was called to the Bar in 1974 and presently practices as a sole practitioner in the City of Peterborough, Ontario.

Particulars 2(a) and (b)

5. On August 13, 1982 Karen Elizabeth Birse, then age 2, was severely scalded in a bathtub while in the care of Deborah Taylor, her babysitter. Karen suffered extensive burns below her waist as well as significant trauma which resulted in a secondary physical injuries such as grinding of teeth and gnawing of gums. Karen was required to undergo substantial plastic surgery, orthodontal treatment and psychological treatment which continues to the present day.

6. Karen's mother, Jackie Aherne (then Birse), retained the Solicitor to commence an action to seek compensation for Karen's injuries.

7. Ms. Aherne obtained a legal aid certificate to make an application under the Compensation for Victims of Crime Act. This certificate was issued on January 20, 1984.

25th January, 1996

8. On June 1, 1984 the Solicitor formally applied for another legal aid certificate for Ms. Aherne for the purpose of commencing a civil action on behalf of Karen Birse. In the letter to Legal Aid the Solicitor explained the circumstances of Karen's injury and expressed his understanding that there was an insurance policy which might "very well cover a civil action". The Solicitor did prepare a Writ of Summons on behalf of Karen Elizabeth Birse and her mother as her next friend, naming Deborah Taylor as the defendant. The Writ of Summons was served on July 5, 1984. A copy of the Writ and Affidavit of Service are attached as Exhibit 1 to this agreed statement of facts. The Solicitor reported to Ms. Aherne respecting the service by letter dated July 9, 1984.

9. Deborah Taylor retained a solicitor to act on her behalf in the matter. That solicitor corresponded with the Solicitor on July 23, 1984 asking that the Solicitor waive the necessity of filing an appearance until proper instructions in the matter were received. The Solicitor communicated this fact to his client by a letter of July 27, 1984. By letter dated August 17, 1984 the Solicitor wrote to Ms. Taylor's counsel to enquire on the status of his attempts to obtain instructions. A further reminder letter in this regard was written September 5, 1984. By letter dated September 5, 1984 the Solicitor also wrote to his client advising her of the status of the matter, copy of this letter is attached as Exhibit 2 to this agreed statement of facts.

10. The Solicitor did obtain a copy of the insurance policy from counsel for Ms. Taylor and reported this fact to Ms. Aherne on September 14, 1984. On September 14, 1984 the Solicitor wrote to Dr. Zuker of the Hospital for Sick Children to seek advice regarding Karen's prognosis.

11. The Solicitor also wrote to his client on September 19, 1984 providing her with a report as to the status of the matter on that date. A copy of the Solicitor's September 19, 1984 letter is attached as Exhibit 3 to this agreed statement of facts.

12. Ms. Aherne responded by letter dated September 21, 1984, copy of which is attached as Exhibit 4 to this agreed statement of facts.

13. The Solicitor responded by letter dated September 26, 1984, a copy of which is attached as Exhibit 5 to this agreed statement of facts. The Solicitor had some contact with the insurer for Deborah Taylor and by letter dated March 29, 1985, a copy of which is attached as Exhibit 6 to this agreed statement of facts, the insurer sought medical information respecting Karen's condition. The Solicitor did not provide the report sought and did not in fact seek a medical report from Dr. Zuker until January 7, 1989. A copy of the Solicitor's letter to Dr. Zuker is attached as Exhibit 7 to this agreed statement of facts. The Solicitor admits that he failed to take any steps to communicate with Ms. Taylor's insurers following their letter of March 29, 1985.

14. In February, 1991, Ms. Aherne attended at the Solicitor's office to obtain information respecting the status of Karen's claim as well as the status a file regarding Karen's adoption by Ms. Aherne's new husband. In addition, the Solicitor had in the interim been retained to act for Ms. Aherne regarding an automobile accident which took place on January 24, 1990. During the meeting at the Solicitor's office, he assured Ms. Aherne that he would be contacting her within the week to discuss the status of all matters. The Solicitor failed to do so and, as a result, Ms. Aherne wrote to him by letter dated June 24, 1991, a copy of which is attached as Exhibit 8 to this agreed statement of facts. The Solicitor responded by letter dated July 8, 1991 in which he advised he would be away on holidays and would respond in two weeks time. The Solicitor failed to respond.

25th January, 1996

15. As a result Ms. Aherne wrote a letter of complaint to the Society dated August 8, 1991, a copy of which is attached as Exhibit 9 to this agreed statement of facts. The Society corresponded with the Solicitor by letter dated August 16, 1991 seeking his comments to the letter of complaint. Thereafter several telephone calls took place between the offices of the Law Society and the Solicitor, commencing with a call by the Law Society on September 4, 1991. A copy of the Society's telephone transaction form is attached as Exhibit 10 to this agreed statement of facts. The Solicitor acknowledges that the information recorded therein accurately reflects the sequence of events which took place.

16. The Solicitor responded to Ms. Aherne's complaint by letter dated September 12, 1991, copy of which is attached as Exhibit 11 to this agreed statement of facts. The Solicitor's response was sent to the complainant. In his response the Solicitor stated that he would continue to act for Ms. Aherne if she was willing to have him continue to act. The Society corresponded with the Solicitor advising that if the complainant elected to continue to retain him he would be held to his commitment to give her priority service.

17. By letter dated October 24, 1991 the complainant wrote to the Law Society to advise that she had decided to give the Solicitor another opportunity to act for her and the Society's file was closed.

18. The Solicitor prepared and issued a Statement of Claim on behalf of Karen Birse on January 20, 1992. The Solicitor also wrote to Ms. Aherne at that time to report to her on the current status of various legal matters. A copy of the Solicitor's January 20, 1992 letter and enclosed Statement of Claim are attached collectively as Exhibit 12 to this agreed statement of facts.

19. The Solicitor wrote to Ms. Aherne again on April 8, 1992 advising that the claim had been served and that he had acceded to a request from counsel for the insurer for indulgence respecting delivery of the Statement of Defence.

20. During the fall of 1993, Ms. Aherne attempted, on a number of occasions, without success, to contact the Solicitor and determine the status of her various files. She wrote to him on January 31, 1994 to confirm her attempts to contact him. A copy of the January 31, 1994 letter is attached as Exhibit 13 to this agreed statement of facts. Following the Solicitor's failure to reply to this letter, Ms. Aherne corresponded once again with the Law Society and asked that her complaint be reactivated.

21. The Society communicated with the Solicitor by letter dated March 16, 1994, a copy of which is attached as Exhibit 14 to this agreed statement of facts regarding Ms. Aherne's complaint. The Law Society also wrote to Ms. Aherne suggesting to her that she retain a new counsel to act for her in the matter.

22. A staff member of the Society spoke to the Solicitor on April 5, 1994 seeking his response to the March 16 letter. The Solicitor advised he would correspond in the near future. A further letter was sent to the Solicitor on April 20, 1994 confirming his failure to reply to the March 16, 1994 letter. The Solicitor was advised that his failure to respond would result in a referral of the matter to the Chair of Discipline. A copy of the Society's April 20, 1994 letter, absent enclosures, is attached as Exhibit 15 to this agreed statement of facts.

23. By letter dated April 27, 1994, Ms. Aherne's new counsel, Robert O'Brien, wrote to the Solicitor seeking Ms. Aherne's file. The Solicitor responded by letter dated April 29, 1994 in which he advised that he would deliver the file shortly. The file was delivered on May 5, 1994.

24. By letter dated May 11, 1994, a copy of which is attached as Exhibit 16 to this agreed statement of facts, Mr. O'Brien wrote to the Solicitor seeking information regarding the status of the file.

25th January, 1996

25. Mr. O'Brien also wrote to Ms. Taylor's insurers, the Co-operators, seeking their advice on the status of the claim. Co-operators responded by letter dated May 19, 1994, copy of which is attached as Exhibit 17 to this agreed statement of facts.

26. The Society made further attempts to contact the Solicitor in telephone calls of June 8 and June 10, 1994 which were not returned.

27. By letter dated June 20, 1994 Mr. O'Brien wrote to the Society to outline his understanding of the status of Karen's action. Copy of Mr. O'Brien's June 20, 1994 letter is attached as Exhibit 18 to this agreed statement of facts. The Solicitor admits that it is accurate in all factual respects.

28. To date the Solicitor has not responded to the Society's March 16, 1994 letter and has provided no explanation for the misconduct set out above.

V. PRIOR DISCIPLINE

29. The Solicitor was Reprimanded in Committee on April 27, 1993 in regard to two complaints of professional misconduct for failing to reply to the Society and failing to make the Form 2 year-end filings required by the Law Society Act. In addition to the Reprimand, the Solicitor was ordered to pay the Society's costs of \$1,000.

DATED at Toronto this 30th day of March, 1995."

"SUPPLEMENTARY AGREED STATEMENT OF FACTS

I. FACTS

1. Mr. O'Brien followed his May 11, 1994 letter to the Solicitor with a letter dated June 9, 1994, a copy of which is attached as Exhibit 19 to this agreed statement of facts. The Solicitor responded by letter which was dated June 22, 1994, a copy of which, absent enclosures, is attached as Exhibit 20 to this agreed statement of facts.

2. Mr. O'Brien responded by letter dated August 9, 1994, a copy of which is attached as Exhibit 21 to this agreed statement of facts. Not having received a response Mr. O'Brien wrote to the Solicitor again on October 6, 1994, a copy of which is attached as Exhibit 22 to this agreed statement of facts.

3. To date, the Solicitor has not responded to Mr. O'Brien's correspondence.

Injuries to Karen Birse

4. Attached as Exhibits 23, 24, 25, 26 and 27 to this agreed statement of facts are a copy of the Reasons for Judgment of His Honour Judge G.L. Murdoch in the criminal trial of Elizabeth Taylor and various medical reports regarding Karen Birse's condition.

5. The Solicitor admits that his failure to provide Jackie Birse/Aherne with information regarding the status of her daughter's lawsuit has caused her, over a period of many years, significant mental anguish.

DATED at Toronto this 3 day of April, 1995."

Based upon the Agreed Statement of Facts and the Supplementary Agreed Statement of Facts and the admissions of professional misconduct contained in the Agreed Statement of Facts, the Committee finds all of the particulars of professional misconduct as set out in Complaint D232/94 established.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Alan Stanley Harries be suspended for a period of six (6) months, such suspension to continue thereafter until such time as the Solicitor has formally replied to the Law Society's letters to him particularized in paragraph 2 (c) of the complaint and that he pay costs in the amount of \$1,500.00.

REASONS FOR RECOMMENDATION

The Solicitor testified in his own behalf on the issue of penalty. He began by registering an apology to Jackie Aherne and her minor daughter, Karen Elizabeth Birse, the two individuals most detrimentally affected by his conduct.

He also apologized to the Law Society for his failure as a member and acknowledged the harm to the profession which has undoubtedly resulted.

On the key issue of why he procrastinated for so long and so completely, the Solicitor had no real explanation except to acknowledge that he became professionally "paralyzed" by the file. He referred to a "mental Block" which caused him to procrastinate.

He indicated that he was perplexed by his own conduct in that he had handled two other files for Jackie Aherne to her and his own complete satisfaction.

Exhibit 5 is an undertaking signed by the Solicitor dated April 4th, 1995. In this document, the solicitor agrees to voluntarily cease to practise law by May 31st, 1995. He also agreed to cooperate fully with the staff trustee in the winding up of his practice and acknowledges that any breach of the undertaking could be used in future discipline proceedings against him.

The Solicitor is 51 years of age, having practised law for approximately twenty years.

In all of the circumstances of this case, your committee recommends the following penalty:

- 1) a suspension for a period of six months (Law Society's counsel having submitted that a suspension in the circumstances was appropriate and that the desirable range was from two to six months);
- 2) the suspension is to continue thereafter until such time as the Solicitor has formally replied to the Law Society's letters to him as particularized in paragraph 2(c) of the Complaint; and
- 3) the Solicitor is to pay the reasonable costs of the Law Society in the sum of \$1,500.00.

We regard the Solicitor's conduct in this matter as a very serious breach of the Rules of Professional Conduct. It is the type of conduct which seriously deteriorates the confidence of the public in the legal profession.

Because the limitation period for an action to be taken by the minor has not yet expired (in fact, it has not yet begun), it would appear that Jackie Aherne and her daughter, Karen Elizabeth Birse, will be able to pursue a valid claim against the woman responsible for the injuries to the daughter, and, if that fails, likely against the Solicitor. However, the completely unwarranted delay has and will likely continue to have a negative impact upon these parties.

25th January, 1996

Alan Stanley Harries was called to the Bar on the 22nd day of March, 1974.

ALL OF WHICH is respectfully submitted

DATED this 31st day of May, 1995

Roger D. Yachetti, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

Convocation heard opening statements by both counsel.

A motion was brought by Mr. Black to admit fresh evidence before Convocation which included the solicitor's Affidavit and character evidence.

Counsel for the Society consented to the character evidence but objected to the Affidavit and argued that the matter should be sent back to the Discipline Committee.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

CONVOCATION RESUMED AT 2:05 P.M.

PRESENT:

The Treasurer, Armstrong, Arnup, Backhouse, Carpenter-Gunn, Crowe, Curtis, Furlong, Gottlieb, MacKenzie, Manes, Marrocco, Puccini, Ross, Scott, Strosberg, Swaye, Thom, Topp, Wilson and Wright.

.....

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IN PUBLIC

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Re: Alan Stanley HARRIES (cont'd)

Mr. Perrier made brief submissions concerning the Rules of Procedure adopted by Convocation in October 1992.

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

It was moved by Mr. Manes, seconded by Ms. Backhouse that the matter be referred back to a fresh Committee for a hearing de novo and that the hearing be expedited.

Carried

25th January, 1996

It was moved by Mr. Strosberg, seconded by Ms. Ross that the motion to accept further evidence not be granted because it did not meet the criteria, that the affidavit resiled from the Agreed Statement of Facts and the matter be remitted to a fresh Committee for a fresh hearing.

Not Put

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the matter be referred back to a fresh Committee for a hearing de novo and that the hearing be expedited.

Counsel and solicitor retired.

Re: David Clyde Magambo KOMA - Toronto

The Secretary placed the matter before Convocation.

Messrs. Strosberg and Mr. Thom withdrew for this matter.

Ms. Cohen appeared for the Society and Mr. Black appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 23rd March, 1995, together with an Affidavit of Service sworn 31st March, 1995 by Louis Katholos that he effected service on the solicitor by registered mail on 27th March, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th January, 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

Donald H. L. Lamont, Q.C., Chair
Stuart Thom, Q.C.
Hope Sealy

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

Georgette Gagnon
for the Society

DAVID CLYDE MAGAMBO KOMA
of the City
of Toronto
a barrister and solicitor

Harry Black
for the solicitor

Heard: January 17, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On November 30, 1993, Complaint D276/93 was issued against David Clyde Magambo Koma alleging that he was guilty of professional misconduct.

The matter was heard in public on January 17, 1995 before this Committee composed of Donald H.L. Lamont, Q.C., Chair, Stuart Thom, Q.C. and Hope Sealy. Mr. Koma was present at the hearing and was represented by Harry Black. Georgette Gagnon appeared on behalf of the Law Society.

DECISION

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

Complaint D276/93

2. a) He practised law while his rights and privileges as a member were suspended during the following periods:
 - i) September 28, 1990 to June 17, 1991;
 - ii) November 29, 1991 to December 5, 1991;
 - iii) June 5, 1992 to July 14, 1992;
 - iv) November 2, 1992 to date;
- b) He has failed to maintain books and records as set out in Sections 14 and 15 of the Regulation.

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 D276/93 and is prepared to proceed with a hearing of this matter on January 17, 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 D276/93 and admits the particulars contained therein. The Solicitor further admits that the said particulars constitute professional misconduct.

IV. FACTS

4. The Solicitor was called to the Bar on June 22, 1984. He practised as a sole practitioner until his suspension on November 2, 1992 for non-payment of his errors and omissions levy. The Solicitor remains suspended for non-payment of this levy.

25th January, 1996

2(a) He practised law while his rights and privileges as a member were suspended during the following periods:

i) September 28, 1990 to June 17, 1991

5. By letter dated October 3, 1990, the Law Society advised the Solicitor that his rights and privileges as a member were suspended by Convocation as of September 28, 1990 as a result of his failure to pay his late filing fee. The Solicitor paid the late filing fee and the suspension was terminated on June 17, 1991.

6. The Solicitor continued to practice law between September 28, 1990 and June 17, 1991 as evidenced by the following:

- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from October 12, 1990 to October 31, 1990 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from November 5, 1990 to November 29, 1990 demonstrating the receipt and disbursements of trust funds;
- Solicitor's cancelled cheques drawn on his trust account, dated October 12, 1990, October 26, 1990, November 5, 1990, November 7, 1990 and November 29, 1990
- Solicitor's trust account bank deposit slip dated October 12, 1990, (account #53-01513);
- Solicitor's trust account bank deposit slip dated November 5, 1990, (account #53-01513);
- Solicitor's trust account bank deposit slip dated November 29, 1990, (account #53-01513);
- Solicitor's trust cash receipts journal from October 12, 1990 to June 4, 1991
- Solicitor's trust cash disbursements journal from October 12, 1990 to June 13, 1991

ii) November 29, 1991 to December 5, 1991

7. By registered mail dated December 2, 1991, the Law Society advised the Solicitor that his rights and privileges as a member had been ordered suspended by Convocation effective November 29, 1991 as a result of his failure to pay his errors and omissions insurance levy. The Solicitor paid the outstanding errors and omissions levy and was reinstated to the practice of law on December 5, 1991.

8. The Solicitor continued to practice law between November 29, 1991 and December 5, 1991 as evidenced by the following:

- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period of November 29, 1991 demonstrating the disbursement of trust funds

25th January, 1996

iii) June 5, 1992 to July 14, 1992

9. By registered mail dated June 1, 1992, the Law Society advised the Solicitor that his rights and privileges as a member had been ordered suspended by Convocation effective June 5, 1992 as a result of his failure to pay his errors and omissions insurance levy.

10. By letter dated July 16, 1992 the Law Society advised the Solicitor that his suspension had been terminated effective July 14, 1992.

11. The Solicitor continued to practice law between June 5, 1992 and July 14, 1992 as evidenced by the following:

- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from June 19, 1992 to June 30, 1992 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from July 2, 1992 to July 14, 1992 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank deposit slip dated June 19, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated June 29, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated June 30, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated July 9, 1992 (account #53-01513);
- Solicitor's cancelled cheques drawn on his trust account, dated June 22, 1992 and June 30, 1992
- Solicitor's trust cash disbursements journal from June 22, 1992 to June 30, 1992
- Solicitor's trust cash receipts journal from June 19, 1992 to July 9, 1992

iv) November 2, 1992 to date:

12. By registered mail dated November 3, 1992, the Law Society advised the Solicitor that his rights and privileges as member had been ordered suspended by Convocation effective November 2, 1992 as a result of his failure to pay his errors and omissions insurance levy. As of today's date, the suspension is still in effect.

13. Following November 2, 1992, the Solicitor continued to practice law as evidenced by the following:

- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from December 2, 1992 to December 29, 1992 demonstrating the receipt and disbursements of trust funds;

25th January, 1996

- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from January 13, 1993 to January 25, 1993 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for the period from February 10, 1993 to February 26, 1993 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for March 1, 1993 demonstrating the receipt of trust funds;
- Solicitor's trust account bank statement from the Canadian Imperial Bank of Commerce (account #53-01513) for May 5, 1993 demonstrating the receipt and disbursements of trust funds;
- Solicitor's trust account bank deposit slip dated December 2, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated December 4, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated December 9, 1992 (account #53-01513);
- Solicitor's trust account bank deposit slip dated January 15, 1993 (account #53-01513);
- Solicitor's trust account bank deposit slip dated January 25, 1993 (account #53-01513);
- Solicitor's trust account bank deposit slip dated February 12, 1993 (account #53-01513);
- Solicitor's trust account bank deposit slip dated February 15, 1993 (account #53-01513);
- Solicitor's trust account bank deposit slip dated April 30, 1993 (account #53-01513);
- Solicitor's trust account bank deposit slip dated May 4, 1993 (account #53-01513);
- Solicitor's cancelled cheques drawn on his trust account, dated December 2, 1992, December 4, 1992, December 7, 1992, December 23, 1992, December 24, 1992, January 13, 1993, February 10, 1993, February 12, 1993, February 26, 1993, March 1, 1993, and April 30, 1993
- Solicitor's trust cash receipts journal from November 23, 1992 to May 4, 1993
- Solicitor's trust cash disbursements journal from November 24, 1992 to April 30, 1993
- Solicitor's report on title, dated November 19, 1992 to the Royal Bank of Canada
- Charge/Mortgage of Land, registered on November 24, 1992

25th January, 1996

- Solicitor's report on title, dated November 30, 1992 to the Royal Bank of Canada
- Solicitor's letter to T.T.C. Employees Credit Union Limited dated December 4, 1992 providing his certified trust cheque and requesting he be provided with a valid and registerable discharge.
- Charge/Mortgage of Land, registered on December 7, 1992
- Solicitor's letter to Firstline Trust Company, dated December 7, 1992 providing his certified trust cheque and requesting that a valid and registrable discharge of mortgage be provided to him.
- Charge/Mortgage of Land, registered on December 7, 1992
- Solicitor's reporting letter to Joseph Grigg, dated December 15, 1992
- Solicitor's report on title, dated January 13, 1993, to the Royal Bank of Canada
- Solicitor's Request for Mortgage Funds, dated January 13, 1993, to the Royal Bank of Canada
- Solicitor's reporting letter to Jody Chow, dated January 15, 1993
- Charge/Mortgage of Land registered on February 12, 1993
- Charge/Mortgage of Land registered on April 30, 1993.

14. On or about May 15, 1993 the Solicitor closed his law office and states that he ceased to practise law and closed his trust account.

15. In November, 1993 the Solicitor admits that he practised law in respect of a purchase and sale of a business transaction which was eventually aborted.

Particular 2(b)

Failure to maintain books and records as set out in Section 14 and 15 of the Regulation

16. On June 1, 1993 a Law Society examiner completed an examination of the Solicitor's books and records. The examiner reported deficiencies in the Solicitor's books and records.

17. By way of explanation the Solicitor states that as of July 31, 1991 he was no longer able to afford the services of a bookkeeper or accountant and attempted to maintain his books and records himself.

18. The Solicitor cooperated fully with the Law Society examiner and no evidence of misappropriation or misapplication of trust monies was found.

V. DISCIPLINE HISTORY

19. The Solicitor does not have a discipline history.

DATED at Toronto this 17th day of January, 1995."

25th January, 1996

Mr. Koma admitted the professional misconduct in the Agreed Statement of Facts, and again when he was giving evidence as to penalty.

Accordingly, we found him guilty of the professional misconduct alleged.

RECOMMENDATION AS TO PENALTY

The Committee recommends that David Clyde Magambo Koma be suspended for a period of two months. This suspension would follow the present administrative suspension. The recommended suspension would continue indefinitely until his books and records are brought up to date to the satisfaction of the Law Society and all filings made. Before returning to practice, Mr. Koma must attend on the Practice Review Department for assistance and guidance, and as may be required by that department, he shall continue to participate and cooperate in the Practice Review Program.

REASONS FOR RECOMMENDATION

It is necessary to relate some of Mr. Koma's background and his difficult financial circumstances from the time he came to Canada as a refugee.

In his home country of Uganda he graduated as a barrister and for a number of years was employed by and represented Uganda in international bodies such as UNESCO and at the United Nations.

With the political upheaval in Uganda he fled to Canada as a refugee.

Arriving in Canada as a refugee with little money, he worked for two years as a dishwasher and similar work.

But he wished to become a lawyer here in Canada.

He applied to enter law school and was assessed by the Joint Committee on Accreditation. The recommendation was that he be given credit for one year. He entered Queen's Law School and graduated.

He completed the Bar Admission Course and was called to the Bar in 1984.

Mr. Koma had no wish to practice as a sole practitioner. He failed to get a job in a firm or with government. For about two years he shared office space with another lawyer. His practice was limited to real estate and immigration.

He did not manage his practice very well. This was not about his trust account. His clients often did not pay and he did not know how to go about collecting from them and it was not his nature or experience to demand payment.

During this time, whatever he made from the practice he used to pay back student loans to the extent of \$22,000.00.

As will be noted in the Agreed Statement of Facts, he was in arrears a number of times for his annual fees and the Errors and Omissions levy, simply because there was not money available.

Practising while suspended for non-payment of the Errors and Omissions levy and without insurance coverage put his clients in jeopardy, and judging from his practice, they were members of the public least aware of the dangers they might have faced.

25th January, 1996

The arrears of annual fees and Errors and Omissions levy amount to about \$16,000.00.

He sincerely regrets that he continued to practice while suspended. But it was to somehow try to "make ends meet". Mr. Koma is a gentleman. It is a sad case which gave the Committee a great deal of concern. His counsel Harry Black was equally concerned for him.

There were two witnesses for Mr. Koma. The gist of their evidence was, and we agree, that Mr. Koma is an honest, intelligent person with ability to practice law, but not to manage a law office. We are not aware of any complaints.

One of the two witnesses would employ him to do legal research if that were permitted by Convocation.

Mr. Koma, with the assistance of his counsel Mr. Black, will apply to the Law Society for some relief for the arrears of fees.

This man needs help if it is still possible.

In coming to a recommendation for penalty, we were aware of the recent discipline cases for solicitors who have practised while suspended. They are MacGregor, Ellison, Laan and Fejes.

However, the circumstances of this case differ markedly from those cases.

We are of the opinion that the recommendation we have made takes into account Mr. Koma's background, his financial difficulties in becoming a lawyer here, his good qualities as a person, his honesty and sincere regrets. It will leave some hope for him to get re-established.

David Clyde Magambo Koma was called to the Bar on the 22nd day of June, 1984.

ALL OF WHICH is respectfully submitted

DATED this 23rd day of March, 1995

Donald H.L. Lamont, Q.C.
Chair

There were no submissions and the Report was voted on and adopted.

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 2 months and that the suspension follow the present administrative suspension and continue indefinitely until his books and records were brought up to date and filings made and that he attend the Practice Review Program upon returning to practice.

Ms. Cohen made submissions in support of an increased penalty of a suspension of 12 - 17 months. She argued that the Discipline Committee made a serious error.

Mr. Black made submissions in support of the recommended penalty.

There were questions from the Bench.

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

25th January, 1996

It was moved by Mr. Strosberg, seconded by Mr. Gottlieb that the recommended penalty be adopted.

Carried

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

Counsel and solicitor retired.

Re: Kimberley Anne SMITH - Newmarket

The Secretary placed the matter before Convocation.

Ms. Backhouse, Mr. Gottlieb and Ms. O'Connor withdrew for this matter.

Mr. Scott did not participate.

Ms. Cameron appeared on behalf of the Society and Mr. Hately appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 16th October, 1995, together with an Affidavit of Service sworn 21st November, 1995 by Ronald Hoppie that he had effected service on the solicitor by registered mail on 3rd November, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th January, 1996. Copies of the Report having been forwarded to the Benchers prior to Convocation, the reading of it was waived.

The Report of the Discipline Committee is as follows:

THE LAW SOCIETY OF UPPER CANADA

The Discipline Committee

REPORT AND DECISION

Nancy Backhouse, Chair
Gary Gottlieb, Q.C.
Shirley O'Connor

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

Lesley M. Cameron
for the Society

KIMBERLEY ANNE SMITH
of the Town
of Newmarket
a barrister and solicitor

Not Represented
for the solicitor

Heard: July 18, 1995

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DISCIPLINE COMMITTEE begs leave to report:

REPORT

On May 4, 1995, Complaint D437/94 was issued against Kimberley Anne Smith alleging that she was guilty of professional misconduct.

The matter was heard in public on July 18, 1995 before this Committee composed of Nancy L. Backhouse, Chair, Gary Lloyd Gottlieb, Q.C. and Shirley O'Connor.

Ms. Smith was not in attendance at the hearing nor was she represented. Leslie Cameron appeared on behalf of the Law Society.

DECISION

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

Complaint D437/94

2. a) she failed to serve her client, Walter Roethlisberger, in a conscientious, diligent and efficient manner, in that she failed to:
 - i) follow his instructions to register a business name, MECSMART, with the Ministry of Consumer and Commercial Relations;
 - ii) respond to his inquiries for information about his legal matter;
 - iii) render an account and account for trust monies upon termination of her retainer;
 - b) she misled her client, Walter Roethlisberger, by falsely advising his wife that she had registered the business name, MECSMART, with the Ministry of Consumer and Commercial Relations;
 - c) she failed to provide a reply to the Law Society regarding a complaint by Walter Roethlisberger, despite letters from the Society dated June 20, 1994 and September 9, 1994; and telephone messages left on July 14, 1994 and August 8, 1994; and telephone conversations on July 18, 1994 and July 27, 1994.

REASONS FOR FINDING OF PROFESSIONAL MISCONDUCT

The Solicitor was served with a copy of the Complaint by registered mail posted May 5, 1995 and picked up May 9, 1995. On May 26th, 1995, the Solicitor advised that she was unavailable in the month of June for a hearing and requested an opportunity to retain counsel. The Solicitor was advised by counsel for the Law Society that the matter would have to be spoken to at the May 29th, 1995 Hearings Assignment Tribunal. Neither the Solicitor nor anyone on her behalf attended the Hearings Assignment Tribunal on May 29, 1995. Accordingly, at that time, a proceed date of July 18 and 19 was set. The solicitor was advised by registered mail dated May 29, 1995 of the proceed date of July 18 and 19, 1995 and further advised in that letter that if she wished to request an adjournment she could do so at the Hearings Assignment Tribunal on June 5, June 12th, July 4th or July 10th, 1995. That letter was posted May 30th, 1995 and picked up on June 15, 1995. By letter dated June 27th, 1995 and delivered by overnight courier, the Solicitor was again advised of the July 18th and 19th, 1995 hearing date and was asked to contact counsel at the Law Society. Subsequent messages on July 12th and July 13th, 1995 were left at the Solicitor's office requesting that she contact counsel for the Law Society. The Solicitor failed to respond to the aforesaid letters or telephone calls. We are satisfied that the Solicitor was fully aware of this matter and chose not to attend.

25th January, 1996

Walter Roethlisberger and his common-law spouse, Colleen Thornton attended at the Solicitor's office in November, 1993 at which time Mr. Roethlisberger retained the Solicitor to register a sole proprietorship and, if there was any money left from the \$500.00 provided as a cash retainer by Mr. Roethlisberger, to obtain a G.S.T. and P.S.T. registration number.

On December 18, 1993, Mr. Roethlisberger attended at the Solicitor's office to sign the form for the registration of the sole proprietorship and obtained a copy of the form (Exhibit 3). After several telephone calls to the Solicitor to ascertain the status of the matter, Ms. Thornton spoke to the Solicitor in March, 1994. Ms. Thornton expressed concern that nothing had been received back from the Ministry of Consumer and Commercial Relations confirming registration of the sole proprietorship. The Solicitor advised that this was the normal course. Ms. Thornton was left with the clear impression that the sole proprietorship had been registered. The Solicitor undertook in that phone call to obtain the G.S.T. and P.S.T. registration numbers and to confirm that she had done so.

Several subsequent attempts by the client to contact the Solicitor were unsuccessful. Mr. Roethlisberger then did a name search on August 28, 1994 and discovered that no sole proprietorship had been registered on his behalf. He then proceeded to register the sole proprietorship on September 1, 1994. Not having the sole proprietorship registered had prevented him from opening a bank account and depositing his receivables. By letter dated September 26, 1994, Mr. Roethlisberger wrote the Solicitor requesting the return of the \$500.00 retainer. No response was received thereto.

Mr. Roethlisberger has never received from the Solicitor a response, an account or the return of his \$500.00.

Andrew Tyrrell, Complaints Officer for the Law Society, made numerous attempts to contact the Solicitor for an explanation with no satisfactory response.

RECOMMENDATION AS TO PENALTY

The Committee recommends that Kimberley Anne Smith be suspended for a period of 3 months and indefinitely thereafter until she does the following:

- a) provides a letter to the client, Walter Roethlisberger, enclosing a certified cheque in the amount of \$500.00;
- b) provides a copy of the aforesaid letter and a copy of the aforesaid certified cheque to the Law Society;
- c) responds to the Law Society in regard to this matter;
- d) pay costs to the Law Society in the amount of \$1,400.00.

The Committee further recommends that the Solicitor be required to participate in the Practice Review Programme and that she be required to respond promptly to the Society in the future.

REASONS FOR RECOMMENDATION

The Solicitor has failed to reply to her client. Further, the Solicitor has failed to reply to the Complaints Officer of the Law Society. She misled her client by leading his wife to believe that she had performed the legal services which she had been retained to do. She has held on to the retainer for over a year-and-a-half. She has failed to refund the retainer to the client when the client quite rightfully asked for it to be refunded. While there is no obligation on the Solicitor to enter into an Agreed Statement of Facts, the

25th January, 1996

Solicitor's failure to reply to the Law Society required Mr. Roethlisberger and Ms. Thornton to take time off work to attend to be witnesses at this hearing. The Solicitor's behaviour has caused inconvenience to the client and cannot but help to have eroded the public's confidence in the profession.

Kimberley Anne Smith was called to the Bar on the 18th day of April, 1985.

ALL OF WHICH is respectfully submitted

DATED this 16th day of October, 1995

Nancy Backhouse
Chair

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

Carried

The recommended penalty of the Discipline Committee was that the solicitor be suspended for a period of 3 months and indefinitely thereafter until the conditions set out in the Report were met.

Mr. Hately made submissions for a lesser penalty of a reprimand and for the solicitor to be allowed up to a year to pay the Society's costs.

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

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

It was moved by Ms. Ross, seconded by Mr. Topp that the solicitor be reprimanded and participate in the Practice Review Programme.

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Topp that the solicitor not pay the costs of the Society.

Carried

Counsel, the solicitor, the reporter and the public were recalled and informed of Convocation's decision that the solicitor be reprimanded, participate in the Practice Review Programme and not be required to pay costs.

The Treasurer administered the reprimand.

Counsel and solicitor retired.

Mr. Manes took the Chair as Acting Treasurer.

Re: Timothy David SALOMAA - Mississauga

The Secretary placed the matter before Convocation.

Mr. Topp and Ms. O'Connor withdrew for this matter.

Mr. Scott did not participate.

25th January, 1996

Ms. Ratchford appeared for the Society and Mr. Hately appeared for the solicitor who was present.

Convocation had before it the Report of the Discipline Committee dated 12th October, 1995, together with an Affidavit of Service sworn 21st November, 1995 by Ronald Hoppie that he had effected service on the solicitor by registered mail on 3rd November, 1995 (marked Exhibit 1), together with the Acknowledgement, Declaration and Consent signed by the solicitor on 25th January, 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

Jane Ratchford
for the Society

TIMOTHY DAVID SALOMAA
of the City
of Mississauga
a barrister and solicitor

Holly Nickel
for the solciitor

Heard: June 27, 1995

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 D316/94 was issued against Timothy David Salomaa alleging that he was guilty of professional misconduct.

The matter was heard in public on June 27, 1995 before this Committee composed of Thomas J.P. Carey, Chair, Shirley O'Connor and Jane Harvey. The Solicitor was in attendance at the hearing and was represented by Holly Nickel. Jane Ratchford appeared on behalf of the Law Society.

DECISION

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

Complaint D316/94

2. (a) he breached an Order of Convocation that he suspend his practice for failure to pay his Annual Fees, by continuing to practise during the period November 1, 1993 to December 23, 1993;
- (b) he breached Section 14(8) and 14(12) of Regulation 708 made pursuant to the Law Society Act by failing to maintain sufficient trust balances to meet his trust obligations to clients.

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 D316/94 and is prepared to proceed with a hearing of this matter on June 27 and 28, 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 this Agreed Statement of Facts and Complaint D316/94 with his solicitor, Holly Nickel and admits that the particulars contained therein constitute professional misconduct. With respect to the allegation of practising while under suspension, the Solicitor admits that he did so during the period from November 8, 1993 to December 22, 1993, some 45 days.

IV. FACTS

4. The Solicitor was called to the Bar on April 8, 1976. Since 1983, the Solicitor has been a sole practitioner, whose practice has an emphasis on real estate law.

ALLEGATION OF PRACTISING WHILE UNDER SUSPENSION
BETWEEN NOVEMBER 1, 1993 TO DECEMBER 23, 1993

5. On November 1, 1993, the Solicitor's rights and privileges as a member of the Law Society were suspended for non-payment of the first instalment of his annual fees which was due on July 1, 1993. A copy of the registered letter dated November 2, 1993 advising the Solicitor of the suspension is found at Tab 3 of Document Book.

6. The Solicitor was reinstated as of December 23, 1993.

7. The Solicitor acknowledges that he received written notification from the Society on November 5, 1993 that he was suspended from practice commencing on November 1, 1993 due to the non-payment of his annual fees. The reason the Solicitor had not paid his annual fees was due to lack of funds. On November 15, 1993, the Solicitor forwarded funds to pay his Errors and Omissions Insurance Levy. On December 23, 1993, the Solicitor forwarded the funds to pay the Society's annual fee levy.

8. During this period of suspension, the Solicitor engaged in the practice of law as set out in paragraphs 8 to 36 below.

F.M.I. FOOD MARKETS

9. On November 24, 1993, the Solicitor caused the incorporation of F.M.I. Food Marketers International (Ontario) Ltd. (F.M.I.). A copy of the Articles of Incorporation prepared by Mr. Salomaa are found at Tab 4 of Document Book.

10. In relation to the incorporation of F.M.I., the Solicitor rendered an account dated November 25, 1993 in the amount of \$1,275.58. The Solicitor's trust ledger balance for this client indicates that payment was received for this account on January 14, 1993. A copy of the account and the trust ledger are found at Tabs 5 and 6 respectively, of Document Book.

BAKSH PURCHASE FROM FERNBROOK HOMES

11. During the period November 9, 1993 to December 22, 1993, the Solicitor acted for clients Azaz Jim Gaffar Baksh and Annette Baksh in relation to their purchase of a property in the City of Brampton from Fernbrook Homes (Brampton) Limited.

12. In this regard, the Solicitor performed the following legal services:

- a) he prepared and forwarded letter dated November 9, 1993 to the Solicitors for Fernbrook Homes making requisitions in relation to the purchase, see Tab 7 of Document Book;
- b) he prepared and commissioned a Statutory Declaration by the Bakshs on November 27, 1993, see Tab 8 of Document Book;
- c) he prepared and witnessed a document entitled Purchaser's Covenants on November 29, 1993 see, Tab 9 of Document Book.
- d) he requested a certificate as to Writs of Execution, Warrants Liens in respect of the Purchasers and Vendor on November 29, 1993, see Tab 10 of Document Book;
- e) he prepared and witnessed on November 29, 1993 a mortgage obtained by the Bakshs in respect of the subject property, see Tab 13 of Document Book;
- f) he corresponded with the Solicitor for the Vendors by letter dated December 22, 1993 in relation to the property, see Tab 14 of Document Book.

and
13. The Solicitor received the sum of \$1,000.00 on November 29, 1993 in relation to the legal services set out above, see Tab 15 of Document Book.

CARL PURCHASE FROM JOHN KAVCIC JR. LTD.

14. During the period November 7, 1993 to December 20, 1993, the Solicitor acted for Christopher and Carol Karl on their purchase of a property in Mississauga from John Kavcic Jr. Ltd.

15. In this regard, the Solicitor performed the following legal services:

- a) the Solicitor prepared and forwarded a requisition letter dated December 7, 1993 to the Solicitors for the Vendor, Messrs. Keyser, Mason, Ball & Lewis. A copy of this letter is found at Tab 16 of Document Book;
- b) the Solicitor prepared and executed an Interim Report on Title to the Toronto Dominion Bank dated December 15, 1993, see Tab 17 of Document Book;
- c) the Solicitor prepared and registered a mortgage on the subject property on December 16, 1993;
- d) the Solicitor prepared and registered another mortgage to the Toronto Dominion Bank on December 16, 1993, see Tab 19 of Document Book;
- e) the Solicitor attended at the Sheriff's Office and made a request for a search as to Writs of Execution in relation to the Purchasers and Vendor on December 16, 1993, see Tab 20 of Document Book;
- f) the Solicitor reported to Mr. and Mrs. Karl on the transaction by letter dated December 20, 1993. A copy of this letter is found at Tab 21 of Document Book.

16. In respect of this transaction, the Solicitor received fees in excess of \$1,000.00. The Solicitor's trust balance ledger for these clients is found at Tab 22 of Document Book.

PEEL CONDOMINIUM CORPORATION NO. 94

17. The Solicitor rendered an account to this client on November 8, 1993 in respect of services performed for this client in October, prior to his suspension. A copy of the account is found at Tab 23 of Document Book.

18. The Solicitor corresponded with Grant Management Limited by letter dated November 12, 1993 using his letterhead which identifies him as a Barrister and Solicitor. A copy of this letter is found at Tab 24 of Document Book.

19. The Solicitor received the amount of \$380.00 in relation to the account of November 8, 1993. A copy of the Solicitor's trust ledger for this client evidencing receipt of this payment is found at Tab 25 of Document Brief.

SALIBA PURCHASE FROM RIZZUTO

20. During the period December 1, 1993 to December 13, 1993, the Solicitor acted for the client Carmel Saliba in relation to the purchase from Anna Maria Rizzuto of a property in Mississauga which closed December 10, 1993.

21. In this regard, the Solicitor performed the following legal services:

- a) by letter dated December 1, 1993, the Solicitor made requisitions of the Solicitor for the Vendor in relation to the proposed sale. A copy of the letter is found at Tab 26 of Document Book;
- b) on December 10, 1993, the Solicitor made a request for a certificate of a Search as to Writs of Execution. A copy of the Certificate is found at Tab 27 of Document Book;
- c) on December 10, 1993, the Solicitor commissioned the Affidavit of Land Transfer Tax of Carmel Saliba. A copy of the Affidavit is found at Tab 28 of Document Book;
- d) by letter dated December 13, 1993, the Solicitor reported to Mr. Saliba in respect of the transaction. A copy of the letter is found at Tab 29 of Document Book.

22. A copy of the Solicitor's trust balance ledger for this client is found at Tab 30 of Document Book.

PASTOR PURCHASE FROM WEAVER

23. During the period December 9, 1993 to December 22, 1993, the Solicitor acted for Brent and Teresa Pastor in relation to their purchase of a property in Petrolia from Weaver.

24. In this regard, the Solicitor performed the following legal services:

- a) on December 9, 1993, the Solicitor prepared an Interim Report on Title of the property for mortgage financing. The report is found at Tab 31 of Document Book;
- b) the Solicitor prepared a mortgage and caused registration of same on December 15, 1993. A copy of the mortgage is found at Tab 32 of Document Book;
- c) the Solicitor prepared an account for services rendered dated December 15, 1993. The account is found at Tab 33 of Document Book;
- d) the Solicitor prepared a reporting letter dated December 22, 1993 which is found at Tab 34 of Document Book.

25. A copy of the Solicitor's trust balance ledger for this client is found at Tab 35 of Document Book.

SIMPSON MORTGAGE TO CIBC

26. During the period November 11, 1993 to November 26, 1993, the Solicitor acted for clients Beverly and Arthur Simpson in respect of financing provided to them by the CIBC.

27. In this regard, the Solicitor performed the following legal services:

- a) the Solicitor prepared a requisition for funds on November 11, 1993 to the CIBC Mortgage Corporation. A copy of the mortgage document is found at Tab 36 of Document Book;
- b) the Solicitor made a request for a certificate as to Writs of Execution on November 26, 1993. The request for certificate is found at Tab 37 of Document Book;
- c) the Solicitor prepared a Discharge of Mortgage which was registered on November 26, 1993. The Discharge is found at Tab 38 of Document Book;
- d) the Solicitor prepared a mortgage in favour of the CIBC and caused registration of same on November 26, 1993. The mortgage is found at Tab 39 of Document Book.

28. The client's trust balance ledger is found at Tab 40 of Document Book.

REESAL SALE TO MILICEVIC

29. The Solicitor acted for clients Pooran and Nancy Reesal in connection with their sale of a property in Mississauga during the period November 9, 1993 to November 16, 1993.

30. In this regard, the Solicitor performed the following legal services:

- a) the Solicitor commissioned a Declaration by the Reesals in connection with the sale in November 9, 1993. A copy of the Declaration is found at Tab 41 of Document Book;

- b) the Solicitor executed a Direction re funds on November 15, 1993. See Tab 42 of Document Book;
- c) the Solicitor wrote to the CIBC on November 15, 1993 enclosing a certified cheque in relation to the transaction, see Tab 43 of Document Book;
- d) the Solicitor executed an Undertaking as to mortgages on November 15, 1993, see Tab 44 of Document Book;
- e) the Solicitor reported to the clients by letter dated November 16, 1993. A copy of the reporting letter is found at Tab 45 of Document Book.

31. The Solicitor's trust balance ledger for these clients is found at Tab 46 of Document Book.

STEVENSON SALE TO DRAFFIN

32. During the period November 10, 1993 to November 19, 1993, the Solicitor provided legal services to clients William and Ellen Stevenson in connection with the purchase of a property in Mississauga.

33. In this regard, the Solicitor performed the following legal services:

- a) the Solicitor commissioned a Declaration of the Stevenson's on November 17, 1993. A copy of the Declaration is found at Tab 47 of Document Book;
- b) the Solicitor received correspondence from the Solicitor for Purchaser on November 10, 1993. A copy of this correspondence is found at Tab 48 of Document Book;
- c) the Solicitor rendered an account to Mr. and Mrs. Stevenson on November 18, 1993 in the amount of \$725.46. A copy of the account is found at Tab 49 of Document Book;
- d) by letter dated November 19, 1993 the Solicitor reported to the Stevensons in respect of the transaction. A copy of the letter is found at Tab 50 of Document Book.

34. The Solicitor's trust balance ledger for these clients is found at Tab 51 of Document Book.

KHAIRA PURCHASE FROM MUTUAL LIFE OF CANADA

35. During the period November 8, 1993 until November 22, 1993, the Solicitor provided legal services to his clients Mr. and Mrs. Khaira in connection with the purchase from Mutual Life of Canada of a property in Mississauga.

36. In this regard, the Solicitor performed the following legal services:

- a) by letter dated November 8, 1993, the Solicitor made requisitions of the Solicitors for the Vendor in relation to the transaction. A copy of the letter is found at Tab 52 of Document Book;
- b) the Solicitor prepared an Interim Report and Requisition for Funds on November 12, 1993, see Tab 53 of Document Book;
- c) the Solicitor commissioned a Declaration of the Khaira's in respect of the transaction on November 19, 1993, see Tab 54 of Document Book;
- d) the Solicitor prepared a mortgage in favour of the Mutual Trust Company and registered same on that date, see Tab 55 of Document Book;
- e) the Solicitor prepared an Affidavit of Land Transfer Tax and commissioned same on November 19, 1993, see Tab 56 of Document Book;

- f) the Solicitor prepared a Certificate for the Ontario Home Ownership Plan on November 19, 1993, see Tab 57 of Document Book;
- g) the Solicitor reported to the clients by letter dated November 22, 1993. A copy of the reporting letter is found at Tab 58 of Document Book.

37. The Solicitor's trust balance ledger for these clients is found at Tab 59 of Document Book.

V. FAILURE TO MAINTAIN SUFFICIENT TRUST BALANCES

38. An audit conducted on the Solicitor's books and records evidenced the following inadequacies in the Solicitor's books and records:

- a) monthly trust comparisons revealed overdrawn trust ledger balances reappearing month to month in the period September 1993 to December 1993;
- b) some of the errors (Walker and Smith) were caused by insufficient funds being obtained from the clients (N.S.F. cheques) on the completion of the transaction on which he acted. However, disbursements including the Solicitor's fees were paid regardless of the shortage of funds in the account;
- c) overall the client's trust ledger accounts were not being maintained properly. The entries were not always entered and sometimes incorrectly entered. The corrections done by the Solicitor's bookkeeper were not always reflected or properly entered.

39. An overview of the Solicitor's trust ledger for the year 1993 is found at Tab 61 of Document Book. A breakdown of the specific client accounts in overdraft, totalling \$2,828.90, are set out in chart form as follows:

Client	Amount of Overdraft	Date Incurred	Cause
Walker (Tab 62)	\$ 486.57	Sept. 93	Insufficient funds received from client on closing. Member still paid his fees and disbursements.
Teh (Tab 63)	46.52	Sept. 93	Disbursements paid when there was insufficient balance in trust.
Shore (Tab 64)	100.00	Oct. 93	Member taken fees in excess of funds available in trust.
McLaren (Tab 65)	72.00	Oct. 93	Amount received from client overstated in the trust statement by \$535.00. Member transferred some of his fees and disbursements based on this figure.
Gandhi (Tab 66)	100.00	Oct. 93	Double payment to third party.
Regenscheit (Tab 67)	35.00 630.00	Nov. 93	Disbursements towards member's fees and to third party when there were insufficient funds available in trust.
Denyer (Tab 68)	50.00	Nov. 93	Overpayment to client.
Viola (Tab 69)	79.00	Nov. 93	Payment made to third parties from trust. Funds had been transferred into the general account.

Client	Amount of Overdraft	Date Incurred	Cause
F.M.I. (Tab 70)	300.00	Nov. 93	Disbursement made to third party when there were no funds in trust.
Perovich (Tab 71)	677.00	Dec. 93	Unable to reconcile the client ledger provided by the bookkeeper due to various corrections and erasures. Bookkeeper's note indicated the error was accounting.
Sweeney (Tab 72)	25.00	Dec. 93	Payment to third party in excess of funds available in trust.
Smith (Tab 73)	227.81	Dec. 93	Client cheque was returned after disbursements.
	\$ 2,828.90		

40. By April 5, 1994, all of the overdrawn balances were corrected, either by the deposit of the requisite funds to correct the overdrawn positions or through the correction of accounting errors which lead to the overdrawn positions. The Solicitor's explanation of the overdraft positions and the steps taken to effect corrections to the positions is found attached as Appendix "A".

VI. PRIOR DISCIPLINE

a) A formal complaint was issued against the Solicitor on September 6th 1991 which stated that the member failed to reply to communications with the Law Society.

The matter was heard on December 17th 1991 at which time the member was Reprimanded in Committee.

b) A formal complaint was issued against the Solicitor on March 23rd 1992 which stated that the Solicitor had practised while under suspension.

The matter was heard on July 9th 1992 at which time the member was Reprimanded in Committee.

c) The Solicitor was found guilty of professional misconduct on February 3rd 1993 in regard to his failure to diligently and conscientiously serve his client and issuing a false report to his client.

The matter was heard at Convocation on June 24th 1993 at which time he member was suspended for one month effective June 26th 1993. \$4,500.00 in costs were also assessed.

DATED at Toronto, this 27th day of June, 1995."

RECOMMENDATION AS TO PENALTY

The Committee recommends that Timothy David Salomaa be suspended for a period of four months and pay costs in the amount of \$2,000.00.

REASONS FOR RECOMMENDATION

The Committee is all of the view that the two matters together are serious and should be treated seriously in light of the past record of misconduct. This is the fourth time, in the last four years that there has been a finding of misconduct and for that reason the Committee is recommending a suspension of four months, plus costs of \$2,000.00.

In view of the Committee, it is particularly serious that this Solicitor was practising while under an administrative suspension. It was a flagrant violation. None of the matters he attended to with the exception of sending out a bill, were matters that could not have been taken care of by another solicitor. None of them were emergency situations and the flagrancy is added to by the fact that the Solicitor has been before the Law Society for this kind of behaviour before.

The Solicitor's record is becoming a serious one that may very well be approaching the type that would label the solicitor as ungovernable.

The bookkeeping issues and infractions in and of themselves would not ordinarily bring about a serious penalty, but they are reflective in their sloppiness of an attitude of uncaring or a lackadaisical attitude that, coupled with the record, gives one the impression of a solicitor whose heart and soul is not into practising law in a conscientious and careful manner. It certainly is our concern that the Solicitor clean up the problem and we were gratified to hear that his brother who is his bookkeeper would be bringing in a computer system.

Frankly, it may be appropriate for him to review whether it would be better for him to have a more arm's length accountant, but in any event, we certainly recommend that he go to a computer system.

The recommendation is for a four month suspension and costs of two thousand dollars and that is viewing the matters in their totality as opposed to breaking them down as to applying to the two counts individually.

Timothy David Salomaa was called to the Bar on the 8th day of April, 1976.

ALL OF WHICH is respectfully submitted

DATED this 12th day of October, 1995

Thomas J.P. Carey
Chair

The Report was voted on and adopted.

The recommended penalty was that the solicitor be suspended for a period of 4 months and pay costs in the amount of \$2,000.

Counsel for the Society made submissions in support of the recommended penalty.

Mr. Hately made submissions in support of a lesser penalty.

There were questions from the Bench.

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

25th January, 1996

It was moved by Mr. Swaye, seconded by Mr. Wright 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 4 months and pay the Society's costs.

Convocation granted the suspension to commence March 1, 1996.

CONVOCATION ROSE AT 4:30 P.M.

Confirmed in Convocation this *23* day of *February*, 1996


Treasurer