Discipline in the Legal Profession in Ontario

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DISCIPLINE IN THE LEGAL PROFESSION
IN ONTARIO

S. Arthurs*

Introduction

This is a study of one aspect of discipline in the legal profession of Ontario. Through a study of disbarred lawyers it is hoped that there may emerge a clearer view of those factors which may have contributed to the behaviour which incurs the Law Society's ultimate punishment.

The study is based on data from the Law Society's files of 80 lawyers disbarred between 1945 and 1965 in Ontario. Although 93 lawyers were disbarred during this period, it was possible to obtain information concerning only 80.

Not all the Law Society's files which were obtained were complete. In some cases the files included information on the education of the lawyer, the nature of his practice, and records of the disbarment investigation and proceedings.

In addition, much of the necessary background data is unavailable. For example, it is not known how many lawyers are in solo practice, or what percentage of the bar is in each specialty. There is a study, however, of Canadian lawyers published in 1950 and 19511 which provides some background information.

Any consideration of behaviour and the circumstances surrounding misconduct must take into account the rules governing a lawyer's conduct and their enforcement by the Law Society. Without these rules, which reflect its values, the profession would wither. But there is a hierarchy of values; since not all values are basic to the survival of the group, they are not accepted

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as equally important by all the members of that group. This differential acceptance is reflected by differential enforcement. The greatest penalty, disbarment, appears to be reserved for those offences which likely threaten the group's existence as an independent entity. For those infractions which offend only the legal community, and likely only a small portion of it, lesser sanctions are imposed.

Finally, in addition to examining the rules, the disapproved behaviour, and the circumstances surrounding it, it will be necessary to look at as much of the lawyer's background as possible. Neither legal training nor legal culture overrides the effect of the various situations in which lawyers find themselves and from which they came to the practice of law.²

Official Framework: The Law Society

The legal profession of Ontario is officially governed by the Law Society of Upper Canada. This organization has power to make rules and set standards of behaviour for its members. Behind these rules and standards are the right and power of enforcement. Since this is a study of lawyers who have deviated from acceptable norms of behaviour and have been sanctioned by disbarment, it is necessary first to consider the official framework within which the norms are set and decisions to sanction are taken.

The legal profession in Ontario is self-governing both by tradition and by statute. Under the Law Society Act, Barristers Act, and Solicitors Act, membership in the Law Society of Upper Canada is required for the practice of law. The legal profession of Ontario is therefore "integrated" in the sense that every lawyer must be a member of the professional society. As part of this system of self-governance, the elected governing body of the Society, the Benchers, are by the Law Society Act empowered to exercise disciplinary power over the members.³ The most severe sanction, disbarment, therefore simultaneously removes a lawyer from membership in the Society and from his status as a legal practitioner. The legislation does not set out any rules of conduct which lawyers must follow,⁴ so that the Law Society's power to make rules governing its members is actually a power to fix standards of professional behaviour.

What are the rules, then, according to which a member is judged guilty of professional misconduct and disbarred? The only collection of "rules" or norms of professional behaviour is the Professional Conduct Handbook. This Handbook was issued by the Professional Conduct Committee of the Benchers with the approval of the governing body, in 1964. It is not intended to be exhaustive, and its contents are regarded merely as indicative guidelines, rather than definitive standards of conduct. The one exception to this general-

³Law Society Act, R.S.O. 1960, c. 200, s. 44.
⁴Id. s. 43.
ization is the "Rules Respecting Accounts." That there are rules concerning accounts rather than rulings or guidelines likely reflects the Law Society's special interest in this area. Violations of these rules will almost certainly lead to disciplinary action.

Neither in the Handbook, nor in any other official document, are specific penalties established for infractions of the Rules Respecting Accounts or of the other rulings. The Law Society Act sets forth the penalties that the Benchers can impose—disbarment, suspension and expulsion—but it does not specify which are to be imposed for particular acts. The Handbook itself simply warns that "The Benchers...shall have power to treat any infringement of these rules or any failure to comply therewith as professional misconduct." Thus, the situation is one of vague rules and unpredictable sanctions, the discretion of the Law Society controlling both, case by case.

The permanent staff of the Law Society is the first agency to be formally notified about a lawyer's behaviour, usually as the result of complaints from clients or other lawyers. In this situation, the lawyer is usually sent a copy of the complaint and his reply is requested. Failure to reply in itself constitutes professional misconduct. When the reply is received with the lawyer's explanation, it is considered by the Secretary of the Law Society, in some cases in consultation with the Chairman or Vice-Chairman of the Discipline Committee. If the lawyer's explanation appears satisfactory, the complainant is so advised and the matter closed. This is one stage at which a decision is made as to whether the behaviour is "professional misconduct."

However, some complaints are not disposed of so quickly. Investigation of the complaint may reveal, for example, a lawyer's delay, neglect or failure to inform his client about the progress of a case. In these instances the Law Society aids the complainant by following through transactions, prodding the lawyer, requiring a report when the matter has been completed or by its very presence acting as a catalyst to remedial action by him.

There is another means by which the Law Society becomes aware of possible misconduct. These are unannounced random audits which the Law Society conducts throughout the province. Auditors employed by the Law Society examine the books and trust accounts of lawyers in different locales each year. These examinations can uncover irregularities which may result in a more detailed audit or a report from a Chartered Accountant advising that the irregularities have been corrected and that the lawyer's accounts comply with the Rules Respecting Accounts.

In the case of trust account irregularities, a notice is sent to the lawyer advising him to make all his records available to the Law Society auditor or his agent. The auditor's report, which is sent to the Law Society Secretary, outlines the nature of the lawyer's practice, his method of bookkeeping, and

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5 PROFESSIONAL CONDUCT HANDBOOK, Law Society of Upper Canada, Rules Respecting Accounts; Rule 14, p. 4.
6 Id. Ruling 20, p. 47.
7 Id. Rule 11(1), p. 3; also Law Society Act, s. 43(e).
the apparent disposition of the money which was the subject of the complaint, or which seemed to have been improperly dealt with, and possibly, further trust fund shortages.

On receipt of this report, assuming it indicates shortages the Secretary drafts a formal Notice of Complaint, with the Discipline Committee's approval, and sets a hearing date. The procedure of the hearing is the same throughout for "neglect" complaints as well as for shortages, for example. At the hearing, the lawyer usually is present (in some cases with counsel) as are the Secretary of the Law Society, the investigating auditor and the complainant. The Discipline Committee and the lawyer's counsel question the witnesses. Evidence is tendered by the Secretary of the Law Society to show that the lawyer's behaviour amounts to misconduct. The Committee then decides whether there has been misconduct, and if so, what the disposition of the matter ought to be.

Its findings and recommendations are reported to Convocation, the plenary body of the Benchers. This report is also sent to the lawyer in question, and he is advised of the date on which Convocation will consider his case. On that date the lawyer and his counsel can appear and make representations to Convocation, which then confirms or varies the Discipline Committee's recommendations.

There are a number of verdicts which the Discipline Committee and Convocation may reach. They may decided to dismiss the complaint, if, for example, there is insufficient evidence to indicate misconduct or "poor practice". The remaining possibilities are: reprimand by the Discipline Committee; reprimand in Convocation; suspension for a specified time; resignation; disbarment.

Reprimand by the Discipline Committee itself is usually reserved for cases involving no serious professional misconduct, but instances of "poor practice". Here, the Discipline Committee requires an undertaking by the lawyer, and he is admonished to change his ways. Rather more serious, although essentially similar is the sanction of reprimand in Convocation.

Reprimands, whether in Committee or in Convocation, may or may not be made public; and if they are reported, the individual is not always named. Reporting depends upon whether the Law Society views the case as a serious matter. If it does, the naming of the individual is used as a form of punishment. If the case merely illustrates a practice or principle which the Law Society feels should be brought to the attention of the profession, the Society will note the behaviour leading to reprimand, but not the individual's name.

Notices of suspension are published in the daily press and the Ontario Reports, stating the individual's name, the period of his suspension and the reason for suspension.

Those who are allowed to "resign at their own request" generally are involved as well in "poor practice", but tend to be older lawyers who may be ill or senile. They must undertake never to practice again in order to escape censure.
Disbarments are reported in the press and Ontario Reports, giving the individual's name and generally stating the cause for disbarment. In addition, a disbarred lawyer cannot be employed in any capacity by another lawyer nor can he share office space with him. Thus, both his livelihood and his reputation are affected. In some cases, the findings of Convocation are given to the Crown Attorney for the purpose of preparing a criminal charge.

In Ontario, there is (at the time of writing) no appeal to the courts from a decision of Convocation. That is, there is no appeal on the facts of the case; although, challenge can be made on the basis of a "denial of natural justice" or an error in law. In the period 1945-65, there was one such appeal and the Law Society's decision was overturned.

The only route to reinstatement lies through an application to the disciplining body itself. Although there is no right to reinstatement, applications are sometimes considered and lawyers are reinstated occasionally. Of the 93 lawyers disbarred between 1945-65, six had been reinstated or were making application. There do not appear to be any set rules regarding reinstatement. Generally, it could be said that a lawyer must have repaid any claims made against him for defalcation, and shown signs of rehabilitation. Applications for reinstatement are usually supported by petitions from lawyers in good standing and "responsible" people in the community, such as bank managers, previous employers and clergymen. Decisions are made on the basis of individual considerations.

Analysis of the Data

93 lawyers were disbarred between 1945 and 1965. Grouping the number disbarred into five year periods, we found an increase over time: in 1945-1949 13% of the total were disbarred; 16% in 1950-1954; 20% in 1955-59; 51% in 1960-65. The increase in the number of disbarments is not solely the result of the increased number of lawyers. The number of lawyers almost doubled from the 1951 census to the year 1966, while disbarments increased fourfold from 1945-1949 to 1960-65. That the period 1960-1965 shows an absolute as well as relative increase may reflect in part the intensified surveillance and changed attitude by the profession toward defaulting lawyers which developed during this period.

The number disbarred has decreased since 1964. In 1966 there were three disbarments, and there was an equal number in each of the two following years. This decrease could be a by-product of the deterrent and control aspects of the Law Society's measures.

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8 Id. Ruling 9, p. 25.
10 The 1951 Census indicates 3,388 lawyers practising in Ontario. CENSUS OF CANADA, 1951, v. 4, Table 4, p. 2. In 1961 there were 4,902 lawyers. CENSUS OF CANADA, 1961, v. 3, 1-3, p. 5. In 1966, there were approximately 6,150 lawyers. The Law Society provided this figure. Inquiries were made to obtain from them the annual count of lawyers from 1945 through 1965; however, this information was not available.
**Reasons for Disbarment**

Let us now examine more closely the kinds of infractions which brought about disbarment. In the following table, the phrases at the left can be seen as describing offences in which these disbarred lawyers were involved.

**TABLE 1**
BEHAVIOUR LEADING TO DISBARMENT

<table>
<thead>
<tr>
<th>Number of Disbarred Lawyers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improper use of trust funds:</td>
<td></td>
</tr>
<tr>
<td>Received money in trust and not put into trust account: 20</td>
<td>25%</td>
</tr>
<tr>
<td>Trust account overdrawn:</td>
<td></td>
</tr>
<tr>
<td>Misappropriation of trust funds: 46</td>
<td>58%</td>
</tr>
<tr>
<td>Forgery/Fraud: 5</td>
<td>6%</td>
</tr>
<tr>
<td>Neglect (does nothing on a case or keeps money received for a case): 6</td>
<td>8%</td>
</tr>
<tr>
<td>Other (assault, divorce collusion): 2</td>
<td>3%</td>
</tr>
<tr>
<td>Total: 79</td>
<td>100%</td>
</tr>
</tbody>
</table>

If we consider the first four charges as part of the same behavioural constellation, we see that 83% of the lawyers were disbarred for misappropriation of clients' funds and related activities. Money was received in trust and was used by the lawyer for his own purposes. This concentration of discipline in one area could indicate that the Law Society has a great concern with trust violations. It might be hypothesized that if the Law Society did not control this area as assiduously as it does the profession might be made subject to some form of external regulation. Clearly, infraction of these rules of conduct can imperil the autonomy of the profession, and thus threatened, the profession deals as firmly as it can with offenders.

In the 20 cases of trust fund mishandling where the charge was not misappropriation, one might wonder why the lesser sanctions of suspension or reprimand were not imposed. Accordingly, we looked for factors which might have been used to justify disbarment. The files of 8 of the 20 cases of "lesser" trust fund violations hinted at possible misappropriation. In 4 of these cases personal debts were mentioned as a reason for an overdrawn account or mixing trust funds with general office monies. In the other 4, the lawyer's investments in land development or companies were pointed to. The files of the remaining 12 lawyers indicated neglect of the client's interests, and prior complaints for this same behaviour.

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11 See, PROFESSIONAL CONDUCT HANDBOOK, Rules Respecting Accounts, for the first three charges. Persons in the first four categories listed in the table frequently were charged as well with failure to keep proper books of accounts (Rules 7 and 8) and often non-reply to the Law Society's letters, (Ruling 20).
Since there are no fixed penalties for infractions of the rules and rulings, it appears likely that past behaviour affected the decision to disbar. 10 of the 20 had been reprimanded and/or suspended in the past, in three cases for similar activities. Five of the suspensions were for failure to pay the annual Law Society fees, possibly indicating the lawyer's need for money. All but three, had had complaints lodged against them in the past.

The forgery/fraud cases did not appear to involve misuse of clients' trust funds. Examples would be forging a mortgage document or advising that a mortgage had been obtained when, in fact, one did not exist. The connection between this activity and conversion of trust funds to one's own use can be seen in the case in which a mortgage is not placed, though false papers are given to the client, and the money is used by the lawyer for his own purposes.

The "neglect" cases would be those in which a lawyer was given a fee to handle a case, or money to turn over in a transaction, but he delayed or neglected to do what he was supposed to do. In these cases, it did not appear that he converted any of the money to his own use. In three of these six cases, the lawyer failed to attend to a client's lawsuit, so that it was lost by default. As we have indicated, these are cases of "general" neglect in which the lawyer is not carrying out his duties in practice.

Explanations Offered by the Lawyers

Accepting that this behaviour did not occur at random, we must try to go beyond the acts in order to understand them more fully. First let us look at the reasons which the lawyers, or witnesses on their behalf, gave for their behaviour.

<table>
<thead>
<tr>
<th>REASONS FOR BEHAVIOUR LEADING TO DISBARMENT</th>
<th>Number of Disbarred Lawyers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments</td>
<td>20</td>
<td>33%</td>
</tr>
<tr>
<td>Personal debts</td>
<td>13</td>
<td>22%</td>
</tr>
<tr>
<td>Illness—Mental</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>—Physical</td>
<td>2</td>
<td>13%</td>
</tr>
<tr>
<td>Alcohol</td>
<td>8</td>
<td>13%</td>
</tr>
<tr>
<td>Gambling</td>
<td>4</td>
<td>7%</td>
</tr>
<tr>
<td>&quot;Poor&quot; lawyer</td>
<td>4</td>
<td>7%</td>
</tr>
<tr>
<td>(Unable to run office; mistakes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>3</td>
<td>5%</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>100%</td>
</tr>
</tbody>
</table>

The "investments" category includes debts arising out of investments, so that the "personal debts" category can be considered as a separate one. The investments involved, for example, land development schemes, finance companies, and mining speculation. While many files may have indicated that
a lawyer had a history of physical or mental illness, only those lawyers who gave this as a reason for their behaviour were included in this category. Tied to such categories as alcohol, gambling and debts was “carelessness”. However, this did not appear to stand out as an independent cause, but rather as an example of circular reasoning. Carelessness and debts may have created problems. Unable to cope with the problems, these lawyers began to drink, gamble, or became ill. This in turn led to further carelessness and debts. A time or “causal” sequence could not be isolated in these cases.

Generally, people appear to act in ways which are consistent with their roles. Thus, members of the legal profession, for the most part, appear to conform to the behaviour expected of them. Should a conflict arise between what they wish to do and generally held expectations, the latter usually prevail. When the “wish” prevails, it is not unusual to discover that the individual has altered temporarily his perception of the extent to which the role “fits” him.¹²

Upon examination of the “reasons” for behaviour leading to disbarment, one point emerges clearly. This is the contrast between what a lawyer “ought to be” and what these lawyers did. The lawyer’s primary role is that of a trusted person, one to whom the public entrusts its important matters. However, the majority of those disbarred manifestly violated the trust ethic through misappropriation, other fraudulent activities or neglect.

What the “reasons” suggest is the disbarred lawyers’ denials that they were acting as a trusted person in the instances in question. Therefore, the inconsistency between what lawyers “ought to be” and what these lawyers did is removed in their own minds in this instance. Comments made by or for the lawyers indicated that they had “borrowed” the money or their practice was “non-law” or that they were not in control of the situation.

Thus, one of the lawyers in this group said he had “borrowed” from the fund to meet heavy expenses, while another used the money “temporarily” for a second mortgage on his home. Consistent with the idea of borrowing, a third “needed a few more months and all obligations would have been covered.” A fourth lawyer implied he was not wholly accountable for his situation in that a retainer he had had of $350 per month suddenly stopped, and his nerves became so bad he could not handle any problems. Another submitted that his age had something to do with his carelessness and inability to cope with the Law Society’s rules respecting accounts. Yet another saw himself as “caught” in the collapse of the real estate market. Some stated that they received no personal benefit from the activity, but that the activities of others led to their problem, since they assumed the obligations of others. The remaining “reasons” include the hazards of solo practice, their own “stupidity,” alcohol, gambling, and illness. In all of these examples, we can see how the trust ethic might be felt to be suspended.

Analysis of "Reasons" Offered

While the lawyers, or others for them, have provided "reasons" for the behaviour which brought them before the Law Society, we would like to pursue the "reasons", not psychologically, but with regard to the circumstances in which these lawyers practised. What aspects in the legal lives of these lawyers could be seen as producing strains which contributed to deviant behaviour in this area? For the most part, the lawyers who were disbarred were what might be called "marginal" lawyers. Marginality in this regard appears to result from the conjunction and interplay of a number of factors: primarily solo practice, general or real estate practice, and involvement in "extra-legal" business.

| TABLE 3 |
| NUMBER IN FIRM WHEN DISBARRED |

<table>
<thead>
<tr>
<th></th>
<th>Number of Disbarred</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disbarred lawyer alone</td>
<td>61</td>
<td>81%</td>
</tr>
<tr>
<td>Disbarred lawyer and 1</td>
<td>8</td>
<td>11%</td>
</tr>
<tr>
<td>associate or partner</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disbarred lawyer as an</td>
<td>4</td>
<td>5%</td>
</tr>
<tr>
<td>employee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disbarred lawyer and 2</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>or more associates or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>partners</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
<td>100%</td>
</tr>
</tbody>
</table>

As can be seen from Table 3, 81% of those for whom there was data practised alone. A survey of the legal profession in 1950 indicated that 43% of all lawyers in Ontario were in solo practice. In 1966, approximately 21% of the Ontario lawyers were in solo practice. The 81% in this group of disbarred lawyers is disproportionately higher than the percentage of lawyers in solo practice in the general lawyer population, given any rough approximation of the trend from 1950 through to 1966. We suggest that solo practice

13 John P. Nelligan, Lawyers in Canada: A Half-Century Count p. 749; see footnote 1. Blaustein and Porter, THE AMERICAN LAWYER, The University of Chicago Press, 1954, pp. 8-10, has 1952 figures and indicates 68% in solo practice in the United States and 70% in Manhattan and the Bronx, New York City. Carlin's 1966 study of the New York City Bar states that 47% of the lawyers were in individual practice. LAWYERS' ETHICS. p. 18, see footnote 2. If this is the pattern, then we could expect a decrease in the Ontario figures.

14 This is based on a count from the 1966 Canadian Law List. The percentage in solo practice is likely somewhat higher than 21% for the following reasons:
(1) Some persons listed in "association" may be so in name only. They may have a shared space and secretarial arrangement with each lawyer having his own set of books and separate practice.
(2) Some persons listed as partners may in fact practice alone, because of the death, retirement or inactivity of the other member of the firm.
(3) Some persons listed as an employer may operate for "trust" purposes as a solo practitioner, handling his own trust accounts, books and cheques. We were unable to use the 1961 Canada Census data. They have only two categories: wage-earner and self-employed. The latter includes solo practitioners, partners, those in large firms, and all groups except employees.
has its own special problems which could play a part in behaviour leading to disbarment. In fact, one gets the impression from some of the data that if a lawyer had formerly been in partnership, his trouble began when he entered solo practice. While the change itself could have been unsettling and led to strains, it seemed rather that the lawyers' comments pointed to features in solo practice itself. One file indicated that complaints about this lawyer's practice arose when he first began to practice alone. Two others indicated bookkeeping problems and debts, and a third, investments, all following entry into solo practice. That none of these incidents arose or led to trouble when the individuals concerned practiced in association suggests either a higher income then or the "control" feature of associates. The latter possibility is raised by the fact that trust funds would not be "available" for personal use if all the associates maintained some control over the withdrawal of funds. Informal control mechanisms exist by the very fact that someone else might become aware of "unethical" practices, which in itself could lead to problems, such as dismissal or dissolution of the association.

The data indicate that we are dealing with a particular type of solo practitioner, one whose practice is primarily in the areas of conveyancing, mortgages and general law. This lawyer practices without the collegial support of those in larger firms, and his practice is more subject to his clients' influence.\textsuperscript{15}

\begin{table}
\centering
\caption{NATURE OF PRACTICE}
\begin{tabular}{l|c|c}
& Number of Disbarred Lawyers & Percentage \\
Conveyancing/mortgages: & 28 & 46\% \{ 84\% \\
General (estate, collection, insurance, division court, criminal): & 23 & 38 \}
Divorce: & 4 & 7 \\
Mining: & 4 & 7 \\
Labour: & 1 & 1 \\
Commercial/corporate: & 1 & 1 \\
\hline
Total & 61 & 100\%
\end{tabular}
\end{table}

\textsuperscript{15} E. O. Smigel, \textit{THE WALL STREET LAWYER}, The Free Press of Glencoe, 1964, p. 263. Smigel points not only to the control exercised by colleagues in the large law firm, but that of clients as well. Many of them are knowledgeable in the law, know what procedures their lawyers should take, and are also concerned with the business image which the law firm may reflect. See also Abraham S. Blumberg, \textit{The Practice of Law as Confidence Game}, (1967), \textit{1 LAW AND SOCIETY REVIEW} 31, n. 20; and Dietrich Rueschemeyer, \textit{Doctors and Lawyers, A Comment on the Theory of the Professions}, (1964), \textit{THE CANADIAN REVIEW OF SOCIOLOGY AND ANTHROPOLOGY} 24.
Table 4 indicates that 84% of the disbarred lawyers were in a conveyancing, mortgage, or general practice. Conveyancing and general practice appear here as two distinct categories, although a number of files suggested a practice encompassing both areas. For most purposes, the 84% can be seen as one group.

This kind of practice usually centres around one of two types of clients—the individual with a "one-shot" transaction, or the real estate investor or speculator. The former is not as profitable as those lawyer-client relationships in which the client is a business. As a 1951 study of the legal profession indicated "...law firms serving individuals do not as a general rule make as large an income as those deriving...income from business sources." This study goes on to say that in Ontario those firms which received 80% or more of their income from individuals made slightly less than half the income of the other firms. In addition, the study affirms that solo practice is generally associated with an individual clientele and, thus, a conveyancing and general practice. This discussion of low income does not necessarily apply to the lawyer with investors and speculators as clients. Often they do well. But, for them, there are pressures and/or opportunities to invest in their clients' enterprises which, as we have seen in Table 2, led to the need for money and misappropriation.

Conveyancing and general practice is considered within the legal profession, and likely without, as "lower-level" law. It does not have the prestige of litigation, tax or corporate law practice. Where prestige does attach to this kind of work, it reflects the complexity and importance of transactions undertaken for very large business enterprises. Further, many "lower-level" law problems can be, and are, handled by lay people such as real estate brokers, insurance companies and mortgage brokers, placing the lawyer in competition with laymen. Thus, a lawyer involved in this type of practice is in a "marginal" position vis-à-vis his profession and the business world. This marginality can often lead to unethical behaviour, especially when aggravated by the low and fluctuating income of the solo practitioner with individual clients.

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16 I do not know how representative of the total Bar the practice breakdown is for the disbarred lawyers. Since the Law Society of Upper Canada does not list practice specialties and lawyers are cautioned against listing themselves as specialists, this information is not readily available.

17 John P. Nelligan, Income of Lawyers, p. 47; see footnote 1. Blaustein and Porter's data (p. 11, see footnote 13) from the Office of Business Economics of the U.S. Department of Commerce indicate that the solo practitioner's income is lower than that of partners and members of law firms.

18 Nelligan, Income of Lawyers, p. 46-47; see footnote 1. Nelligan found that solo practitioners received 80% of their income from individual clients.

19 See Jerome E. Carlin, Lawyers on Their Own, Rutgers, 1962, which is primarily devoted to this and the foregoing discussion. In Lawyers' Ethics, a Survey of the New York City Bar, pp. 66-69, Carlin found that low status clients, that is those with individual problems, provided the lawyer with an unstable income. This fact, combined with competition from other lawyers and lay people were factors in the violation of basic bar norms, e.g. taking advantage of clients.
Primarily, these “marginal” lawyers were those who were disbarred for trust fund violations. They either needed the money to meet personal debts, some attributable to drinking or gambling, or debts which arose out of speculation. The latter activity became available to them in the course of their practice and often reflected the type of real estate development in which their clients were engaged. The same could be said for those in a mining practice whose speculation involved mining stock.

Of the four lawyers involved primarily in divorce practice, two were disbarred for general neglect in that they received fees for cases, but did nothing and did not refund the fees. The other two were engaged in general practice as well and were disbarred for forging a mortgage and for stealing stock certificates from an estate. All of them had a history of client complaints over delays in proceeding with actions. In three of the four cases, the Law Society took an active part in seeing that matters were concluded or, as one file indicated, the Law Society would be “supervising your conduct”. Delay in divorce cases was suggested by one of the Law Society auditors as endemic in this type of practice. He indicated that unless a lawyer reported fully and periodically to his clients, carelessness would lead to trouble. Possibly what we see here is characteristic of an approach to the practice of law, its standards and ethics. This apparent minimal commitment could be seen as a factor in the subsequent activity which resulted in disbarment. This point is underlined by the case of another lawyer engaged in general practice, but with some divorce work. He was disbarred for arranging perjured evidence of adultery.

The one individual in labour law did not handle trust funds and was disbarred for assault. The lawyer in commercial/corporate practice had violated the trust fund regulations, although there was no definite indication that he had used clients’ money for his own purposes. However, in recent years, he had spent considerable time away from practice pursuing a hotel development scheme out of the country.

In their “reasons” for disbarment, 33% of the lawyers claimed they were driven to take trust funds in order to protect their own investments. This led us to consider not only the nature of the investments in which these lawyers were involved, but also the fact of “extra-legal” business generally.

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20 Of the fifty-one lawyers in a conveyancing and/or general practice, only seven were not disbarred for trust fund violations.

21 There were also some in this category who pleaded illness as a factor.
### TABLE 5
**“EXTRA-LEGAL” BUSINESS**

#### A.

<table>
<thead>
<tr>
<th>Number of Disbarred</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Not involved in “extra-legal” business:</strong></td>
<td>49</td>
</tr>
<tr>
<td><strong>Involved in “extra-legal” business:</strong></td>
<td>31</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>80</td>
</tr>
</tbody>
</table>

#### B.

<table>
<thead>
<tr>
<th>Type of Business</th>
<th>Number of Disbarred Lawyers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investments-general:</td>
<td>11</td>
<td>36%</td>
</tr>
<tr>
<td>Land development:</td>
<td>7</td>
<td>23%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>59%</td>
</tr>
<tr>
<td>Companies:</td>
<td>6</td>
<td>19%</td>
</tr>
<tr>
<td>Mining:</td>
<td>5</td>
<td>16%</td>
</tr>
<tr>
<td>Other:</td>
<td>2</td>
<td>6%</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>31</td>
<td>100%</td>
</tr>
</tbody>
</table>

39% of all disbarred lawyers had “extra-legal” business. The greatest number (59%) were active in either general investments or land development, which are the types of opportunities encountered in a conveyancing or general practice. While 84% of all disbarred lawyers were engaged in these two types of practice (Table 4), 74% of those with extra-legal business were practicing as conveyancers or doing general work. Obviously, their practices would put them in contact with individuals dealing in property, or lending and borrowing money, and afford them opportunities for investment either alone or in conjunction with their clients.

The “investments” were not the usual stocks or bonds held by many people, including lawyers. Rather, they were highly speculative and forced the lawyer to spend increasing amounts of time and money on them. As to time, one lawyer indicated that his practice dropped off with his involvement in a company. He had been doing well, but since his practice had gone downhill, and his investment in the company was also shaky, he tried to protect it by using trust funds as a source of additional capital. A second stated that he was more involved in the mortgage and investment business than in legal work.22

The costs of the “investment” were seldom met by a single initial payment. If the investment were speculative, additional money was often required to meet contingencies to avoid losing the entire deal. This is where

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22 In *The Law Society Gazette*, a publication designed to further communication between the Law Society and its members, the Vice-Chairman of the Discipline Committee raises the issue of lawyers “substantially engaged in ‘business’.” He indicates this as a factor in misappropriation and suggests a restriction on this activity. See Gordon W. Ford, Q.C., *Notes on the Discipline Committee*, (1967) 1 *The Law Society Gazette* 27.
trust funds came in. Those who hoped to meet debts or make a quick profit, were often faced with an investment which collapsed, leaving them even further behind. In one case, the lawyer stated that his investments in a declining real estate market led to his use of trust funds, as did another who was "caught in the collapse of the real estate market in 1959". Another two indicated generally that they had lost money in their investments and used the trust funds for personal loans and expenses.

We can see the effects of solo practice in this sphere. With the possibility of a low professional income often found in solo, general practice, a "quick-return" profit in speculative areas may appear very attractive. If the investment requires additional money or falls through, leaving the lawyer in debt, there are no other members in the firm to act as "watchdog" over the use of clients' funds. In some instances of speculation, the lawyer and client are partners. If his "business" partner is a major client, the lawyer may be subject to particularly strong pressure to continue his financial interest because the client is also the source of legal work. The lawyer may meet this pressure through the use of trust funds belonging to other clients. In contrast to larger firms, there may not be many clients with continuing business.

Thus, we can see among some of the disbarred lawyers, a cluster of factors —solo, general practice and an involvement in "extra-legal" business, which may have accounted in some measure for their professional misconduct. By examining their careers, we may be able to get some idea of the sequence of events which led to disbarment. Specifically, how did they practice law? Was disbarment their first encounter with the Law Society, or does it appear that they had been practising in such a way that the behaviour which resulted in disbarment was a "logical" sequel to prior events?

There are a number of indications of prior difficulties in practice: failure to pay annual fees, complaints by dissatisfied clients, reprimands and suspension by the Law Society.

40% of these disbarred lawyers had been in arrears of the Law Society's annual fees. 69% of these had 1 or 2 years in arrears, and 31% were between 3 to 8 years behind. This could suggest that there may have been a low income period for lawyers in the first group and a more sustained low income period for the second. This suggestion is consistent with the fact that lawyers alone in a general practice have a lower income than their counterparts in other forms of practice.

80% of these "marginal" lawyers (solo, general practice, and "extra-legal" business) had complaints lodged against them with the Law Society prior to and distinct from the specific incident which led to disbarment. Of those with complaints on their record, 73% were the subject of between one to five complaints, 11% between six and nine and 16%, ten or more.

23 The Law Society does not have the percentage of the Bar with fees in arrears. We are unable to draw any comparisons between our population and the general one.
There did not appear to be any substantial difference between those with and those without complaints, or between those with a large number and those with few. They had a similar type of law practice and were disbarred for trust fund violations. Generally, if an individual had been in partnership complaints against him began with solo practice.

In order to ascertain if the 80% or the number of complaints received by each is significantly high, we would have to sample the total lawyer population. What percentage of lawyers are the subject of complaints, and how many complaints? More specifically, what percentage in a conveyancing and/or general practice have complaints lodged against them. It may well be that this type of law practice is particularly conducive to client dissatisfaction in that matters may never appear to move as swiftly as or produce the result the client expected.

15% of the disbarred lawyers had been reprimanded previously by the Law Society. By and large, these reprimands resulted from clients' complaints concerning a neglected case or other type of delay. The Law Society's investigation often revealed a failure to maintain proper books of accounts, or overdrawn trust funds, as well as lack of co-operation by the lawyer evidenced by failure to reply to the Law Society's requests for explanations.

Suspensions, for a fixed period of time, had been imposed upon 20% of the lawyers prior to disbarment. In a few additional cases, suspension was used as a “stop-gap” procedure pending further investigation which resulted in disbarment. Investigations resulting in suspension uncovered practices such as negligent handling of cases and indications of conversion. In addition, where a lawyer had been in arrears of fees for two years, suspension was imposed. The acts for which lawyers in the general population are reprimanded and suspended are generally the same as the acts we have seen among those who were subsequently disbarred. What then differentiates this group of lawyers is a disproportionately high percentage of reprimands and suspensions. This is not surprising, since the decision to disbar may have been prompted by the fact that they had had prior encounters with the Law Society and Discipline Committee. The part played by “prior encounters”

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24 There is no data on the percentage of the Bar who have been the subject of complaints. I was advised that even those in the largest firms have complaints lodged against them. Some information on the incidence of complaints was given in a statement by the Treasurer of the Law Society, see (1967) 1 THE LAW SOCIETY GAZETTE 56. In 1966, 474 complaints were considered. If we assumed there was one complaint per person, at most 8% of the Bar would have been involved.

25 The Assistant Secretary of the Law Society indicated that lawyers had been reprimanded for touting, acting for both sides, non-reply to Law Society letters and failure to complete undertakings. Lawyers had been suspended for failure to complete undertakings made to the Law Society, non-reply to letters, failure to attend at the Law Society after notice to do so, and failure to complete a client's case. Except for the inclusion of touting and acting for both sides, the pattern of behaviour of these lawyers is similar to those who were subsequently disbarred.

26 In 1966, 3 lawyers were reprimanded and 1 suspended. (1967) 1 LAW SOCIETY GAZETTE 56. This gives us some idea of the small percentage of the Bar so affected.
in decision-making was brought out earlier when we indicated that the Law Society had not articulated fixed sanctions for particular infractions of the rules, so that cases received individual consideration.

As with complaints, behaviour which has resulted in a reprimand or suspension could be relevant as an indicator of continuing trouble. The effectiveness of reprimands and suspensions as such indicators can only be guessed at, but in some cases, they have been so viewed by the Discipline Committee.

**Academic Career**

The foregoing section focussed, to the extent allowed by the data, on some of the difficulties the disbarred lawyers experienced in practice. We were also able to get some information concerning academic performance; therefore, we can consider, in part, the academic skills and knowledge with which these individuals entered law practice and the possible relationship these had with practice.27

Discussions of professions emphasize the importance of formal education, for this period of systematically acquiring knowledge is a feature which sets a profession apart from other occupational groups. In addition to knowledge, a professional education also imparts standards of conduct; in effect, a professional “way of life”. But in the legal profession there may well be a gap between theory and practice. Admission to law school was until recently based on minimum academic qualifications. Character references are submitted, but they appear to be viewed as merely *pro forma*. (All the disbarred lawyers had favourable character references in their academic files.)

In effect, then, neither the law schools nor the profession have any guarantee that each is admitting only the individuals who will in time meet professional conduct standards.28

Moreover, although it is in the law schools that training in a “way of life” is supposed to begin, legal educators and writers query whether ethics can be taught. Nevertheless, it is possible to see high academic performance as a commitment to the “ethos” of the law.29

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27 We do not have to consider, as did Carlin, variations among schools. For the most part, these lawyers were educated in Ontario according to course requirements set by the Law Society.

28 Ford, *Notes on the Discipline Committee* p. 26; see footnote 22. Ford cites this as a factor among some of the lawyers coming before the Discipline Committee.

29 Rather than teaching ethics *per se*, one approach appears to be that the law schools should indirectly promote the ethical practice of law. See, W. R. Lederman, *Law Schools and Legal Ethics*, (1965) 8 CAN. B. J., p. 217-220. That high academic achievement and commitment are felt to be related is reflected in an address to the Council of Governing Bodies by the then Treasurer of the Law Society of Upper Canada. “We aim at enlisting a class of men who can and will subordinate self-interest to the client’s interest... The highest educational attainment is in my opinion the best preventative against defalcations.” 1939 *PROCEEDINGS CANADIAN BAR ASSOCIATION*, p. 170. See also Julius Stone, Report and Analysis of the Conference on Legal Education and Public Responsibility. American Association of Law Schools, 1959, p. 90. “...[T]he essential attitudes favourable to the assumption of public responsibility by lawyers... [are] acquired by the best students in the course of their straight law studies.”
Table 7 indicates that 85% of the disbarred lawyers had law school averages of C or lower.

Table 8

Of the 49 lawyers whose files indicated a requirement of supplemental examinations, 33 or 67% wrote these examinations. (These are examinations which a student writes if he has failed a paper on the first try.) It will be seen that the highest percentages in Table 8 are in the categories of three or more supernumerals, a total of 58% of all of those for whom information was available.

Of the 49 lawyers for whom there was failure information, 14 (29%) had failed one or more years at law school. It should be noted that there was some overlap between those who wrote supplemental examinations and those who failed.

The 85% of the disbarred lawyers who achieved C average or lower in law school are not unlike a typical range of law students. However, we can look at these results negatively and assert that very few of the disbarred lawyers excelled academically at law school. What perhaps is more crucial is the fact that 67% wrote one or more supplemental examinations, and 29% had

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30 Academic information was available for 46 of the 80 lawyers. Of the 34 “don’t knows”, 28 graduated prior to 1940 when no academic data was kept on file. Of the remainder, 3 had supplemental and failure information only, 1 was a transfer from another school, another simply lacked information and the last was a student who was “disbarred” after his first year.

31 The three additional cases are those in which there was no over-all average in the files, only supplemental and failure information.
failed one or more years. These figures are likely much higher than those found in the general law student population.\textsuperscript{32} Thus, it could be argued that a high percentage of the disbarred lawyers did poorly at law school, a pattern which could be reflected in their "failure" at the Bar. They were as "marginal" at school as they subsequently were at practice.

The last factor pertaining to law school career is the age at which the disbarred lawyers graduated. 72\% graduated from law school in the "typical" age period, that is, between 25-29. In this respect, then, they do not differ from the general law school population.

\textit{Age and Number of Years in Practice}

By looking at the age of the lawyer when he was disbarred we find a somewhat more significant departure from the distribution of lawyers in the general population.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|}
\hline
\textbf{Age} & \textbf{Number of Disbarred Lawyers} & \textbf{Percentage} \\
\hline
21 & 1* & 19\% \\
20-34 & 15 & 27 \\
35-39 & 21 & 18 \\
40-44 & 14 & 13 \\
45-49 & 10 & 7 \\
50-54 & 7 & 6 \\
55-59 & 6 & 7 \\
60 or older & 6 & 7 \\
\hline
\textbf{Total} & 79 & 100\% \\
\hline
\end{tabular}
\caption{AGE WHEN DISBARRED}
\end{table}

*A student—He was "disbarred" in his first year at Law School, and we have not included him in the total.

\textsuperscript{32} We do not have comparable data against which to assess these results. There is an unpublished study of 1960-66 law school graduates. While academic practices and standards differ — fewer supplementals are allowed and fewer failures are allowed to repeat — we can make some comments. This study indicates that 36\% wrote supplemental examinations in first year, 26\% in second year and 11\% in third year. We do not know how many "new" students entered the ranks of supplemental writers in second and third year, but it is likely less than the absolute percentages shown. For example, it is rare for someone in third year to write a supplemental examination if he has not had to write one before. Since we are only concerned, for the sake of comparison, with the percentage writing \textit{any} supplementals during their school career, we can assume that the percentage would not be much greater than 36\%. It would almost certainly be much less than the 67\% of the disbarred lawyers who wrote supplemental examinations. We offer the same suggestions in comparing the 1960-66 law students who failed at all during law school. 19\% failed in first year, 6\% in second, and 2\% in third year. 29\% of the disbarred lawyers failed during law school. This is higher than the 19\% first year failures among the law students, even adding an additional few to their ranks.
The mean age of these lawyers was 43 which is consistent with the average age of 42 for the lawyers in the 1961 Ontario Census. However, in our population, six lawyers between 63 and 79 probably distort the utility of the average. Taking the mode as another way of placing the "typical" disbarred lawyer, we found age 37 the most common, which places him as someone who had been in practice approximately ten years.

Comparing this data with the age distribution of lawyers in the 1961 Ontario Census, we find 16% in the 35-39 category, 11% in the 40-44, 9% in the 45-49 and 14% in the 60+ category. The remaining categories display only a 1-2% difference from the distribution of disbarred lawyers. The disbarred lawyers are over-represented in the first three categories mentioned above.

A man between the ages of 35 and 39, in practice about 10 years, has special features in his life situation which may contribute to disbarment. He may well have been going through a difficult period of paying off debts associated with his education, the establishment of his practice, and the raising of a family. The peak earning period, which for lawyers begins about age 45, has not yet arrived, and he may well be anxious to hasten its arrival after ten years of indifferent financial rewards. This hypothesis is to some extent borne out by the fact that the incidence of disbarment begins to decline from age 50 on.

The fourth category, 60 years and over, is under-represented among the disbarred lawyers. There were 7% in this category compared with 14% in the general lawyer population. This under-representation may be explained by the fact that while earnings may decline at this period so may expenses. However, for those who were disbarred strains which occur at a later stage in life, such as illness or inability to cope with the pressure of practice, appear to have accounted for their disbarment.

Looking at the number of years these lawyers were in practice when they were disbarred, we find further elaboration of the suggestions made above.

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34 Id.
35 Nelligan, Income of Lawyers, 40; see footnote 1. Nelligan indicates that the income in the first fifteen years of practice is lower than in the later years, even after forty years in practice when incomes begin to decline. The peak is at about thirty years. See also, Blaustein and Porter, The American Lawyer, p. 17 in which the peak is said to fall at ages 50 to 54.
TABLE 10
YEARS IN PRACTICE WHEN DISBARRED

<table>
<thead>
<tr>
<th>Years in practice</th>
<th>Number of Disbarred Lawyers</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-5</td>
<td>13</td>
<td>16%</td>
</tr>
<tr>
<td>6-10</td>
<td>19</td>
<td>24%</td>
</tr>
<tr>
<td>11-15</td>
<td>16</td>
<td>20%</td>
</tr>
<tr>
<td>16-20</td>
<td>10</td>
<td>13%</td>
</tr>
<tr>
<td>21-25</td>
<td>5</td>
<td>6%</td>
</tr>
<tr>
<td>26-30</td>
<td>10</td>
<td>13%</td>
</tr>
<tr>
<td>31 or more</td>
<td>6</td>
<td>8%</td>
</tr>
<tr>
<td>Total</td>
<td>79</td>
<td>100%</td>
</tr>
</tbody>
</table>

Those in practice 21-25 years are the smallest and correspond to those lawyers in the 45-49 age bracket. The percentage then rises to include the 23% who were 50 years of age and over (see Table 9) who, we surmise, experienced stresses and strains at this stage of life.

No one year of practice appeared to be the most common for the disbarred lawyer, but three different years occurred more often than the others. First, there were those who had been in practice five years when disbarred; second, eight years; and third, eleven years.

These divisions suggested the possibility that those who had been disbarred in the first five years of practice might exhibit different patterns of behaviour than those in the other two categories. For example, since they had only been in practice five years or less when disbarred, perhaps factors extraneous to their practice situation led to their subsequent involvement with the Discipline Committee. That is, they brought to practice their pre-professional ways of dealing with problems, while perhaps those disbarred at a later stage in their career reacted more directly to its strains.

In general terms, those disbarred in the first 5 years of practice reflected the patterns of the disbarred lawyer population. 77% of them were in solo practice, all did "general" law, and 38% were heavily involved in investments. However, the effect of prior ways of handling problems in strained situations was, no doubt, a factor for many of the lawyers, and was specifically evident for some.

Carlin, LAWYERS' ETHICS; see footnote 2. Carlin found that 43% of the New York City Bar were disciplined in the first ten years of practice. This is the highest percentage breakdown in his table on p. 152. If we list our "years in practice" as he did, the similarities are apparent.

<table>
<thead>
<tr>
<th>YEARS IN PRACTICE</th>
<th>ONTARIO</th>
<th>NEW YORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 or less</td>
<td>40%</td>
<td>43%</td>
</tr>
<tr>
<td>11 to 20</td>
<td>33</td>
<td>37</td>
</tr>
<tr>
<td>21 to 30</td>
<td>19</td>
<td>16</td>
</tr>
<tr>
<td>31 or more</td>
<td>8</td>
<td>4</td>
</tr>
</tbody>
</table>
In a later analysis we will look at two categories of disbarred lawyers: 60% who had been in practice from two to fifteen years at the time of disbarment and the remaining 40% who had practised sixteen years and more.

**Personal and Social Data**

Forty-four or 56% of the disbarred lawyers practiced in Metro Toronto and 44% in the rest of Ontario. These figures are fairly representative of the general lawyer population for that period. 80% of all those for whom information was available are Canadian born. Again, the population of disbarred lawyers does not differ radically from the general lawyer population with regard to place of birth.

Of the 60 disbarred lawyers for whom data were available, 52% were Protestant, 30% Roman Catholic and 17% Jewish. Since we do not know what ethnic and cultural groups are included in the Protestant and Roman Catholic categories of the disbarred lawyers, we cannot apply the Census data. The 17% of the disbarred lawyers who are Jewish may appear to be a disproportionately large group considering that the 1961 Canadian Census shows that 7% of all Canadian lawyers are Jews. However, we would hesitate to make any conclusions based on this gross Canadian figure, since the percentage of Jewish lawyers in Ontario is almost certainly much higher than 7%. This assumption is based on the fact that Ontario has a higher percentage of Jews in its population than most provinces. However, no firm figures could be obtained on the number of Ontario Jewish lawyers either from the Dominion Bureau of Statistics, or from several Jewish organizations.

Information concerning marital status was available for 62 of the 80 disbarred. 79% were married, 11% separated or divorced and 10% single. To compare our data with the 1961 Canadian Census, we grouped together “married and separated” categories as they did. Thus, we have 55 “married” or 91%, one divorced or 1% and 6 single, 10%. These findings are consistent with those of the Census in which 86% were married, .4% divorced, 12% single and 1% widowed. Our material did not indicate any widowers among the disbarred.

In the files of 49 lawyers we were able to obtain data concerning father’s occupation. 35% were professionals’ sons, 35% the sons of white collar

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37 The 1961 Census showed 53% of Ontario lawyers practised in Metro Toronto. CENSUS OF CANADA, 1961, v. 3.1-4. p. 17.

38 The 1961 Canadian Census indicates 90% of the lawyers are Canadian born. These figures are for Canada as the Census does not give a breakdown for Ontario. CENSUS OF CANADA, 1961, v. 3.1-15. pp. 3-4.

39 Id. There are no figures given for Ontario.


41 Doctors, lawyers, the clergy, and engineers were classified as “professional”. As a matter of interest, four of the five lawyers were Q.C.’s. This raises some interesting queries concerning the possible effect of a “successful” father on his son’s subsequent career, especially in the same field. This aspect will be explored later when professionals’ sons are looked at separately.
The percentages of professionals' sons appeared high to us. Since 81% of our population were solo practitioners, we thought our findings ought to have been more consistent with other studies of the legal profession which show that solo practitioners tend to come from non-professional families.

Separating the lawyers by year of graduation and father's occupation, we were able to shed more light on our findings. Based on years of graduation, we created a "postwar" group which was younger and had fewer years in practice when disbarred than the "prewar" group.

TABLE 11
FATHER'S OCCUPATION AND YEAR OF GRADUATION

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Pre-War and Wartime Grads</th>
<th></th>
<th>Post-War Grads</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
<td>Number</td>
</tr>
<tr>
<td>Professional</td>
<td>8</td>
<td>53%</td>
<td>9</td>
</tr>
<tr>
<td>White Collar</td>
<td>3</td>
<td>20%</td>
<td>14</td>
</tr>
<tr>
<td>Blue Collar</td>
<td>4</td>
<td>27%</td>
<td>11</td>
</tr>
<tr>
<td>Total</td>
<td>15</td>
<td>100%</td>
<td>34</td>
</tr>
</tbody>
</table>

For the post-war graduates the percentages are consistent with a typical law school population. It is understandable that a higher percentage of post-war graduates are of white collar and blue collar backgrounds. In the immediate post-war years, more money was available to students either through the Department of Veterans Affairs' loans and/or the generally increased incomes in these sectors of society. The breakdown for the post-war graduates is what we would expect to find among a group of lawyers who were for the most part, solo, general practitioners.

The pre-war and wartime graduates appear to reflect the general law school population of their era in which law was a "gentleman's profession", or, more accurately, when only those who were professionals could afford to send their sons to university.

42 Sales, clerical and business occupations were classified as "white collar".
43 Farmers, skilled and unskilled labour were classified as "blue collar".
44 Carlin, LAWYERS' ETHICS, 28; see footnote 2. 13% of those in individual practice were from a professional background. Also, Jack Ladinsky Careers of Lawyers, Law Practice, and Legal Institutions, (1963) 28. AMERICAN SOCIOLOGICAL REVIEW 48. He found in his study of the Metropolitan Detroit Bar that solo practitioners were more often of working class and entrepreneurial backgrounds than firm lawyers.
45 In this analysis (and hereafter) the terms "prewar" and "postwar" graduates are used as a convenient technique of distinguishing those who were called to the Bar before 1946, and those who were called after that date.
46 The study of law school graduates (see footnote 32) shows a father's occupation breakdown as follows:

<table>
<thead>
<tr>
<th>Occupation</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional</td>
<td>22%</td>
</tr>
<tr>
<td>White Collar</td>
<td>57%</td>
</tr>
<tr>
<td>Blue Collar</td>
<td>23%</td>
</tr>
</tbody>
</table>
To summarize then, the disbarred lawyers apparently do not differ radically from the general lawyer population in terms of birth-place, religion and marital status. The “father's occupation” breakdown also appears typical, at least for the post-war graduates. Why, then, did these lawyers encounter problems which subsequently resulted in their disbarment? It appears that we have a strong argument thus far for the effects of a solo, general law practice on the individual.

Professionals' Sons

We will now examine more closely those whom we might have expected to be less vulnerable to the strains of a solo, general practice, and those who might have avoided such strains altogether by entering a different type of practice. The first group to fall within these categories is the sons of professional men. The other group, the “older graduates”, will be examined in the next section.

One could speculate that life experience in a “professional” family would provide a lawyer with the attitudes and beliefs to help him resist the pressures to seek success through means which are considered improper. Further, the professional's son might well have the family background to help him engage in a different type of practice, if he had wished to do so.

Of our total sample, 35% of the disbarred lawyers were professionals' sons. To the extent that we were able to examine academic performance, we found that all but two of these lawyers had low grades and wrote a number of supplemental examinations. Such poor academic performance may well have hindered any possibility regardless of family background to choose types of practice other than a solo and general one. 80% entered solo practice, practiced “lower-level” law, and all were disbarred for acts in connection with trust funds.

We might hypothesize that for these lawyers their status as professionals' sons was detrimental, rather than beneficial. As a result of the professional background, certain expectations about these lawyers' careers in law likely existed, especially with regard to income level and prestige. However, the type of practice in which they were engaged frustrated these expectations. The tensions created by unrelinquished but impossible expectations might have made trust funds appear as an inviting source of satisfaction.

Given this hiatus between what was expected by family and others and what was achieved, these lawyers, unwilling to admit failure, may have attempted to find a niche outside the system. Indeed this way of life would likely be opposed to the system within which failure was experienced and could be described as “the vindictive choice of a negative identity”.47 This is probable since

... it is easier to derive a sense of identity out of a total identification with

that which one is least supposed to be, than to struggle for a feeling of reality in acceptable roles which are unattainable.\textsuperscript{48}

The final act of converting trust funds, a negation of the trust position, is vindicative in the sense that repudiates the values which have been held out as desirable.

Others of these lawyers, who may have been unable to relinquish their expectations, chose not vindictive opposition but loss of self-control as the solution. \textsuperscript{47}\textsuperscript{4} of these professionals' sons gave illness as a reason for their behaviour, and another two, alcohol and gambling. In one sense these "reasons" are a way of opting out of responsibility for deviant acts.\textsuperscript{49}

\textbf{The Older Disbarred Lawyer}

We suggest that the behaviour of the older lawyers stemmed from factors pertaining to their particular stage of life rather than from the strains which seemed to characterize the group of disbarred lawyers as a whole. We have separated the lawyers into pre- and post-war graduates. The average age for the 39 pre-war or wartime graduates was 50 at the time of disbarment; the average age of the 40 post-war graduates was 37. When disbarred, the pre-war graduate had been practicing an average of 23 years, as compared to 8 years for the post-war graduate. Having practiced for such a length of time, the older group was ostensibly one which was able to operate within the professional framework of the larger society.\textsuperscript{50}

In an attempt to throw light on the sources of trouble for this older group, we shall re-examine this sub-group with regard to the factors looked at earlier in the article. Looking first at the reasons the Law Society gave for disbarment, we do not find any difference between the pre- and post-war graduates.

\begin{itemize}
\item \textsuperscript{48} Id. 62.
\item \textsuperscript{49} R. K. Merton, \textit{Social Theory and Social Structure}, 153-5. This conjecture is based on part of Merton's "goal-means strain" hypothesis which is seen as a factor in deviant behaviour.
\item \textsuperscript{50} Eight (20\%) were Q.C.'s.
\end{itemize}
### TABLE 12
**REASONS FOR DISBARMENT AND AGE**

<table>
<thead>
<tr>
<th>Why Disbarred</th>
<th>Pre-War and Wartime Grads</th>
<th>Post-War Grads</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td>Misappropriation of trust funds</td>
<td>23</td>
<td>59%</td>
</tr>
<tr>
<td>Failure to account for money received:</td>
<td>10</td>
<td>26%</td>
</tr>
<tr>
<td>Other (neglect, forgery, assault, divorce collusion)</td>
<td>6</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>39</td>
<td>100%</td>
</tr>
</tbody>
</table>

Although the “older” and “younger” graduates exhibit similar patterns with respect to “number in firm when disbarred” their types of practice and their incidence of involvement in “extra-legal” business differ.

### TABLE 13
**TYPE OF PRACTICE AND AGE**

<table>
<thead>
<tr>
<th>Practice</th>
<th>Pre-War and Wartime Grads</th>
<th>Post-War Grads</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td>General</td>
<td>11</td>
<td>35%</td>
</tr>
<tr>
<td>Real Estate</td>
<td>11</td>
<td>35%</td>
</tr>
<tr>
<td>Other*</td>
<td>10</td>
<td>30%</td>
</tr>
<tr>
<td></td>
<td>32</td>
<td>100%</td>
</tr>
</tbody>
</table>

There is a more general distribution among the pre-war graduates in the various types of law practice, while the post-war graduates are heavily concentrated in real estate practice. This is perhaps an indication of how a speculative real estate practice could be more of an influence on post-war graduates than on their older colleagues.

### TABLE 14
**EXTRA-LEGAL BUSINESS AND AGE**

<table>
<thead>
<tr>
<th>Involved</th>
<th>Pre-War and Wartime Grads</th>
<th>Post-War Grads</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>Percentage</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>26%</td>
</tr>
<tr>
<td>Not-Involved</td>
<td>29</td>
<td>74%</td>
</tr>
<tr>
<td></td>
<td>39</td>
<td>100%</td>
</tr>
</tbody>
</table>

*Divorce, mining, labour, commercial/corporate*
The pre-war graduates were less involved with "extra-legal" business and were only 32% of all those with "extra-legal" business involvements. Five of the ten who had these involvements had mining investments as opposed to those dealing with real estate. This is indicative of the type of speculation which was prevalent in the 1940's and 1950's. Of the pre-war graduates, we could say that they appear to have been less affected by the real estate and speculative markets than their post-war confreres, at least, to the extent that their legal life involved these aspects less. Thus, we will have to look elsewhere for factors leading to their disbarment, accepting the premise that a real estate practice and investments were among the factors for the other group.

The other factors, we would suggest, are found in what might be termed the "life situation" of the older lawyer. These are the stresses and strains which arise in middle age and beyond, and which have never been faced before; for example, mental and physical deterioration or the loss of a spouse or parent. Unable to handle these "new" situations, these men turned to alcohol, gambling, or just let matters drift. The deviant act then is used as a solution to a personal problem.\textsuperscript{51} We must keep in mind that primarily we are talking of deviance in terms of the Law Society's standards. Thus, neglect or the mixing of general and trust accounts become deviant acts regardless of what prompted them.

The files of 38% of the pre-war graduates indicated that they were physically and/or mentally ill, compared with 25% of the post-war graduates. There is a higher incidence of physical illness among the older lawyers, as we would expect to find in this age category. 80% of the post-war graduates who were ill experienced mental strain. This could tie in of course with their problems encountered in practice. Alcohol figured in the behaviour which led to disbarment for 28% of the pre-war graduates and gambling in two cases. Among the post-war graduates, alcohol was mentioned in one case and gambling in another. The low incidence of the use of alcohol among the post-war graduates likely shows that they did not require this type of "escape" from their problems and more actively sought solutions in speculation or the immediate use of trust funds. The "older" lawyers, on the other hand, escaped into alcohol and became careless or neglected their practice.\textsuperscript{52}

Thus, we would argue that "personal disorganization" appears as a more prevalent factor for the pre-war graduates, while the situational effects of a real estate practice and its attendant opportunities, that is, land speculation, were more instrumental in the disbarments of the post-war graduates.

\textsuperscript{51} See Bruno Cormier, et al., \textit{The Latecomer to Crime} (1961) 3 \textit{Canadian Journal of Corrections}, for a discussion of this phenomenon.

\textsuperscript{52} Some typical comments in this area by the pre-war graduates are:
"Illness has taken me away from practice for several long periods in recent years."
"Went haywire — gambled."
"Combination of alcohol, own divorce and illness."
"Heavy drinking, money ran through fingers like water when on a drinking spree."
Implications and Conclusion

Aspects of Social Control

In the first section of this paper we looked at the profession's rules and standards of behaviour, and its rights and powers of enforcement. It was noted that not all rules are actively enforced, nor are all infractions subject to the same penalty. These differences, it was argued, depend upon the essentiality of the norm for the profession's survival. Thus, infraction of those norms which affect, and are usually accepted by the majority of the profession are invariably punished most severely. Related to this is the fact that a professional society is located within the larger society. There is some reason to believe that the infractions which the profession pursues and punishes most severely are those which are related to the norms of the larger society.

An examination of the official rules and rulings of the legal profession in Ontario pointed to a special concern with the “Rules Respecting Accounts”. These relate to the lawyer's responsibility for funds entrusted to him by clients. As well, it is the area which is most actively enforced, and as the data analysis has shown, violation of the “Rules” figures in 83% of the cases of those disbarred.

Disbarment, primarily for trust fund violation, does not appear to be peculiar to Ontario. Carlin's study of the New York City Bar shows that 32% of the disciplinary cases in the period 1929-62 involved client's financial interests.53 32% is the highest percentage breakdown in this table, and the percentage may well be higher if the cases of disbarment are segregated from the other disciplinary procedures. An analysis of the legal profession in England also indicates that disciplinary actions are primarily for violation of the accounts regulations and for misappropriation.54

Yet, we know there are other areas of a lawyer's practice that concern the organized profession. The Professional Conduct Handbook contains thirty-five rulings relating to a wide variety of other matters, and there is a Professional Conduct Committee to consider novel problems of professional conduct as they arise.

Why then does the area of trust fund obligations appear to stand out as the most important for the profession? What accounts for the decision to apply fairly consistently the “Rules Respecting Accounts”? In addition, why are they applied so that those who break these Rules become the “outsiders” of the profession through disbarment? To get at the basis of these decisions, we must look at two features of the legal profession: its members have a monopoly to render legal services, and they are “trusted” by their clients.

The first point that should be emphasized is that the monopoly which has been given is not absolute. Society can impose a number of sanctions on

53 Carlin, LAWYERS' ETHICS, Table 134, p. 145. See footnote 2.
a professional group and its members. At a minimum, clients can "withhold the expressions of evaluative judgment" or deny prestige to lawyers. A more severe sanction is to reduce the income of lawyers by using lay people for jobs lawyers might otherwise do. Most importantly, government can rescind some or all of the profession's power of self-government. As we noted earlier, the Law Society's power to govern is given to it by statute and could be amended. Succinctly stated: "...Professional autonomy is retained at the pleasure of legislatures." It is to avoid the imposition of these sanctions that the profession must remain sensitive to causes of client or public criticism of lawyers.

One way in which client pressure is brought to bear is by complaints to the Law Society about the conduct of lawyers thought to be dishonest or below the level of competence that has been bargained for. By complaining to the profession, the client not only exerts pressure on the individual lawyer but on the whole profession to rectify the real or imagined wrong that has been done to him. The existence of an organization to receive complaints and follow them through bespeaks the profession's awareness, possibly of their responsibility, and certainly of the repercussions of ignoring complaints.

Secondly, if lawyers are "trusted" persons, the question must be asked how this trust obligation can be policed. In many instances, what seems to be a violation may, on investigation by a "competent" person, turn out to be innocent. Thus, the majority of the complaints to the Law Society were considered and dismissed. Typically, the Law Society obtained the lawyer's explanation and found that his work actually was satisfactory. The lawyer may not have reported to the client as often or as fully as he might have, nor have given a detailed accounting of disbursements and fees, but the job itself was done.

This sequence underlines the difficulty of enforcing standards of professional behaviour. In many instances, the public is not in a position to judge what has been done by those whom it "trusted". What the client asks the lawyer to do for him, ostensibly, is what he cannot do for himself. The

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56 Id. 123.

57 Generally, these complaints would be instituted by clients. In some instances a lawyer or a local bar association will be involved if the aggrieved client has gone to them first. If the client goes to another lawyer to handle his problem, then this lawyer will likely advise the Law Society of the situation.

58 These complaints concerning delays, non-receipt of money in a collection matter or non-accounting of disbursements and fees, for example, are generally dismissed after investigation and sometimes prodding by the Law Society.

59 See C. I. Scott, On Keeping Clients Informed, (1967) 1 The Law Society Gazette 35. Orie Phillips and Philbrick McCoy, The Conduct of Judges and Lawyers, Parker and Co., 1952, at p. 113, report this as one of the two most common complaints against lawyers which they say is not the proper subject for the institution of disciplinary action and could be reduced by taking the apparent precautions. We assume that this is not necessarily seen as an indication of professional misconduct.
“expert” is asked to handle the task because of his expertise, and he is authorized to do it in the manner he sees fit. Implicit in this reliance on the expert is the expectation that the best will be done for the client. However, the client may be in no position to evaluate the service rendered. For example, instances of negligent handling of cases in the form of delays, loss of a right of action through a missed limitation period, inadequate recovery and collusion in settling cases no doubt all occur.

There are difficulties in assessing and detecting the “negligence” aspects not only for the client but for the profession as well. First, client dissatisfaction appears to be a built-in hazard in the practice of law. It is not unusual for clients to feel that their cases are moving too slowly or that they did not receive enough money in settlement. There is, therefore, a tendency to discount such complaints. Secondly, the fact that a lawyer has missed a limitation period may never be known to the client; he might simply be told that his case has been lost “on technical grounds” or for some other accurate but unenlightening reason. Third, the Law Society may find it difficult to evaluate information related by dissatisfied clients or by lawyers, which usually cannot be corroborated by objective facts. For all of these reasons, policing professional competence may be almost impossible.

Trust fund obligations pose an entirely different picture. This is one area in which a lay person is well able to judge, since defalcations, once detected, can be easily assessed especially by the injured client. He has handed over a certain sum of money and expects its return. When this is not forthcoming, or when he has received a document which turns out to be forged, he soon will know that he has been “taken”. In other words, the breach of trust can be objectively validated. This is particularly true of clients, who, like the defaulting lawyer, are skilled businessmen or speculators; but even the ordinary individual is able to realize that his lawyer has not treated him as he expected to be treated.

Violation of trust fund obligations is an act by which the client’s best interests are ignored so that the trustee’s can be advanced. It is not difficult to imagine the outrage this action would incur against the trustee, both personally and as a member of a group. Therefore, with the threat of sanctions from the public, government and “encroachers”, and the visibility of trust fund violations making these threats real, we have seen active efforts to police and enforce trust fund honesty in law practice. The profession has announced to the public the lawyer’s responsibility in this area by instituting the Compensation Fund. This was the profession’s acknowledgement that failure of the governing body to take adequate measures to curb or control fraud and defalcation would lead to protests which might endanger the profession’s

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60 Talcott Parsons, The Law and Social Control in LAW AND SOCIOLOGY, Wm. M. Evan, (ed). The Free Press of Glencoe, 1962, 65. Parsons points to some of the elements in the lawyer’s role which produce this dissatisfaction. He sees the lawyer’s role as one with inherent strains since he acts in those areas in which there are no absolute “right” answers. His function in relation to clients is “...often to resist their pressures and get them to realize some of the hard facts of their situations,... with reference to what the law will permit them to do” Parsons A Sociologist Looks at the Legal Profession in ESSAYS IN SOCIOLOGICAL THEORY. The Free Press, 1964, 384.
right of self government. When the Compensation Fund for victims of defaulting lawyers was discussed by the Treasurer of the Law Society, he indicated that without this Fund run by the Law Society, its members would be subjected to some external regulation.61

A final aspect of trust fund violation is its correspondence to "ordinary" honesty norms.62 It is not lawful to steal another's property no matter where one is located in society. This standard of behaviour is not peculiar to the legal profession as is the case with, say, fee-splitting or touting. Moreover, there is little of a professional lawyer's skill involved in handling money. Trust funds have been turned over to the lawyer to hold or to use in the client's interest. The client asks the lawyer to act in his place, if not according to professional ethics, at least according to the standards binding on all members of society. Because it is part of a lawyer's work to receive money in this way, although others can perform this function as well, the Law Society may be concerned to avoid either the public censure of its members, or loss of the "trust" function to speculators, investment counsellors, or banks. However, the Law Society has indicated that at a certain point a lawyer may be so involved in the "business" of speculation that he is outside the "profession" of law. At that point, the Law Society simply seeks to disassociate itself from the individual by disbarment and will not concede that the legal profession should be held accountable for his wrongs. In these cases, no relief can be obtained from the Compensation Fund.63

The Career of the Disbarred Lawyer

As our data indicated, the disbarred lawyers were, for the most part, solo, general practitioners. In order to understand why this type of lawyer is so highly represented in this deviant population, we must see him in relation to the rest of the profession. In this way, his particular situation will be highlighted.

It is quite evident that we cannot simply speak of "a profession" as if it were a homogeneous group. On the other hand, in a particular context, for example in a discussion of "profession" versus "business", the term does serve a useful purpose. Certain broad differentiating features of each category

61 Law Society of Upper Canada, MINUTES OF CONVOCATION, Jan. 15, 1960, p. 29. Johnstone and Hopson, p. 506; see footnote 55. The same rationale was voiced by the governing body of solicitors in England when their Compensation Fund was instituted. The authors state the Society's main motivation was the maintenance of public confidence in the profession when incidents of dishonesty occurred. "Basically it is a public relations measure."

62 Carlin, LAWYERS' ETHICS, 166; see footnote 2. He points out that it is the ordinary standards of morality which are most often enforced by the organized Bar, not those peculiar to the Bar alone.

63 See Report Re: [name deleted] — Compensation Fund (1965?, undated report to Convocation by Discipline Committee); "In our view, the Compensation Fund does not exist to cast its protection over the criminals who are lawyers for the benefit of all who choose to deal with them for high returns but to those who use lawyers for normal purposes and returns and who, suffering damage through their dishonesty, have no redress... [name deleted] was regarded and used by some, not as a lawyer but as a mortgage broker or investment finder..."
could then be identified and fruitfully compared. Thus, we can point to the existence of specialized training over a period of time among professionals; the acknowledged profit motive among businessmen; a service orientation among professionals. While "caveat emptor" with attendant public judgment may characterize the business world, the professional world is said to be one in which responsibility is placed with the professional to do his best for his client. As has been noted, the client is often unable to judge the nature of the work done for him. Thus, a trust element is expected to exist between the client and the professional and it is the latter's responsibility to see that this trust is maintained.

However, once we have sketched in these two groups, analyses of specific situations often show that we are dealing with "ideal-types". The distinction between professional and business groups is not all that clear-cut. We would be hard pressed to assert that professionals do not hope to make a profit in their dealings with clients. What may separate the professional from the businessman is an attitude toward the way in which profit is made. This attitude may well be fostered by institutionalized ways of "doing business". In other words, there are rules according to which one is expected to operate—expected by the professional group, the public and no doubt by the individual in practice.

Yet, if we focus on the legal profession itself, we will note that some members are more "professional" than others. If we can picture a continuum from business to profession, some lawyers will fall closer to the "pure" professional end, and others closer to the "pure" business end. As one would expect, each could be defined by the type of work he does, with whom, and for whom it is done. The pure professional is most often exemplified by the lawyer in the large law firm, handling complex specialized problems for corporations or for individuals with many business involvements. Near the other end of the continuum is the quasi businessman lawyer, often in solo practice.

It is interesting to note this shift of the prototype "professional" from his historic role of the free, independent practitioner serving the individual client, to those who are members of large firms servicing large corporate clients. The paradox is that the latter is freer.\textsuperscript{64} He can organize his time and choose the work and clientele he wishes. That he can do the latter with some ease rests on the fact that he has a broader range from which to choose, and the division of labour within an organization provides opportunity for specialization or concentration in particular areas of practice. The solo practitioner, on the other hand, depends on the work he alone attracts; and by the very fact of being alone, he must offer his service in all areas of the law. Neither is he supported by such organizational amenities as "juniors", law clerks and title searchers, who do routine and time-consuming work.

We realize that we have excluded here one type of solo practitioner. This is the specialist. He concentrates in one area of law, and his clients are

\textsuperscript{64} Erwin, O. Smigel, THE WALL STREET LAWYER. The Free Press of Glencoe, 1964, pp. 322-338. Smigel argues in Chapter 11 that in service to his client, the most crucial area of practice, this lawyer is free to do his best.
referred to him by other lawyers. His "freedom" again rests with his ability
to restrict both the type of work he does and his clientele. He is not dependent
on the "passing trade" for his income, but rather on his colleagues who are
the basis of his referrals. It is only the lawyer who is firmly entrenched in
the colleague network who can afford to remain in this type of practice.

With regard to our discussion of the "quasi-businessman" lawyer, our
data suggested two examples. There are those who represent individual
clients for single transactions and those representing the speculator and
investor, usually over a long period. Many of the problems of the former
type can be, and often are, handled by non-lawyers such as mortgage brokers,
real estate brokers, accountants, insurance adjusters and trust company
employees, or indeed, by the client acting alone without advice. Thus, the
solo lawyer practises in areas in which there is lay competition, which makes
his income tenuous.

The other group of lawyers falling near the business end of the con-
tinuum is one whose practice is in the "non-law" sphere as well. These lawyers
act for clients with large land-holdings which are usually turned over quickly
for speculative purposes. Here, the lawyer's income and his involvement are
not so tenuous. In fact, he is in effect on retainer to his clients to the extent
that he often has a personal investment in their deals. It is in this respect
that this lawyer is less a "professional".

The solo lawyer in general practice (which includes over 80% of the
disbarred lawyers in this study) appears to be in a "marginal" position in
almost every respect. On our imaginary continuum, he appears to rest some-
where between the businessman and the lawyer. By formal training and by
virtue of his license he is a lawyer. Yet, the nature of his work does not
separate him very distinctly from the businessman. At the one extreme he is
engaged in emulating them, and at the other he is in a form of competition
with them. Within the Bar itself, while a member, he is not part of the
"inner core" which enjoys probably to a full extent the fruits of professional
status in terms of income and prestige. He is the recipient of the work the
large firms or individual specialists shun either tacitly by referral or directly
by refusal. This in terms of his power position, as an index of his status, this
solo practitioner is likely without a voice in formulating and enforcing
standards of professional conduct.

As one writer sees it, the "normal" person is able to check his deviant
impulses because his involvement in conventional institutions and behaviour
means that he has too much to lose by yielding to them. But the solo
practitioner has "marginal" involvement. His law practice is not bound up
with the legal community, nor is he buttressed by an organization. The latter

65 Id. 271.
66 See Arthur Wood, Professional Ethics Among Criminal Lawyers, (1959) 77 SOCIAL PROBLEMS, 80. In his study, Wood found a greater preponderance of high income lawyers and Protestant lawyers as members of the Grievance Committees.
offers not only informal support through the easy accessibility of colleagues but formal support in the person of bookkeepers, auditors, office managers, and the use of double signatures on cheques. We could say then, that these lawyers did not have as much to lose as many of their colleagues in the profession who are more tied to the institutions than they. In fact, a number of those disbarred, appeared to define themselves out of the profession and its commitments by seeing themselves less as lawyers and more as businessmen. Those measures of attracting business and making money which are available to the businessman may become very tempting to the lawyer in this situation.

The use of trust funds viewed from a different perspective can be seen as a way of meeting financial needs and desires. The fact that he practises alone makes their use feasible. The lawyer takes the risk, likely hoping that by the time there is a demand for the money, he will have replaced it. 68

For the investor, a slightly different course of events could have occurred. He made a number of “side-bets” which would be too expensive to lose. 69 For example, the lawyer who began to speculate may not have had any intention of using his client’s trust funds to finance his undertakings. However, once involved in speculation, he may not have had enough of his own money to follow through. To back off would mean a financial loss, possibly in the face of other involvements which were contingent on this one. Thus, the initial situation, speculation, gets bound up with a number of other factors. The use of trust funds, then, is one way to meet this problem. It is likely preferable to bankruptcy which could further restrict the lawyer’s practice, or perhaps end it altogether. 70 The former alternative has the possibility of “working” if the deal goes through before the client needs his money. It is a calculated risk.

Within this general framework, we can identify the significant phases of the disbarred lawyer’s career. The sequence of movements in which he went from law student, to lawyer, to non-lawyer can be pointed to, so that disbarment is not seen as an isolated event, but a logical sequel to prior experiences and activities.

As a law student, the disbarred lawyer did poorly. This may be an indication of actual intellectual limitation which could cause him difficulties as a lawyer. Some of the students pleaded “nerves” every year at examination time, which is another hint of how these individuals reacted under pressure, a feature certainly present in practice. In addition, poor academic achievement is often a bar to acceptance in “better” law firms where monetary and other

68 With the situation re-defined, the prevailing professional standards appear to be “loosened.” One writer has noted that “... [R]isktaking, rather than deviation, is perceived by the conflicting person as a ‘way out’." See Edwin M. Lemert, SOCIAL STRUCTURE, SOCIAL CONTROL AND DEVIATION, in Marshall Clinard, ANOMIE AND DEVIANT BEHAVIOUR, The Free Press of Glencoe, 1964-72.

69 Becker, Notes on the Concept of Commitment, 35-6; see footnote 67.

70 If a lawyer goes into bankruptcy, the Law Society may not permit him to handle trust funds. For a lawyer in general practice, this measure would eliminate a large part of his practice. See, PROFESSIONAL CONDUCT HANDBOOK, Rules Respecting Accounts. Rule 12.
professional rewards can be obtained. Therefore, this type of law student, although an acknowledged lawyer on graduation, begins his career with rather restricted promise of rewards.

The lawyers we have just described likely gravitate into a solo, general practice, with its limitations, strains and risks. That they go into this type of practice may be a result of the actual barriers to other types of practice and the way in which they view their situation. They may feel that because of their academic history, solo, general practice is best suited to them and they avoid entry into other areas.

Once in a solo, general practice, they live with the situation which exists. As we have seen, this situation can be one outside the collegial network, either business-oriented, or providing low income. The strains and risks which appear to be a feature of this situation may make alternative means of success attractive. The opportunity to speculate or to use trust funds to meet speculative and personal debts can be viewed as one such means. The fact of practising alone and the availability of funds makes this behaviour possible.

We noted that complaints, reprimands and suspensions figured in the career of these disbarred lawyers. The difficulties experienced in practice are indicated here. Disbarment, for most of them, was not their first encounter with the Law Society. For example, some of the complaints and lesser sanctions showed that the lawyer had a history of mixing trust and personal funds. Disbarment for trust fund violations appears to have been an extension of this prior activity. On a subjective level, we can imagine the lawyer not seeing too much difference between simply mixing personal and trust funds and using these mixed funds for his own purposes, always with the intention of repayment. However, typically this lawyer would be caught short and asked to return the client's money before he was in a position to repay it.

For those receiving complaints, reprimands, and suspensions for delays and non-reporting, we again see some difficulties in adherence to the profession's standards. Disbarment for “neglect” appears to have been viewed by the Law Society as a means of ending a history of such behaviour.

The professionals' sons may have experienced added difficulties. Entering law with certain aspirations, their generally poor academic performance initially restricted them. They may have felt some obligation to follow their fathers' career and yet not really desired to do so. The strains of this relationship, or the strains associated with limited ability in a situation for which they were not suited, may well have been one step in their movement.

71 For those of an “ethnic” and/or non-professional background, additional contingencies would be relevant. Their likely unfamiliarity with professional mores may affect internalization of the standards which the profession expects. As we have noted, this task is not completely performed within the law schools. Their background also may bar their acceptance into the law firms which can guarantee and support professional rewards and standards. As well, their potential client “contacts” cannot generally provide a high and sustained professional income, but rather individual, small-scale transactions, or non-professional business opportunities.
toward the activity for which they were disbarred. We noted earlier that some of them pleaded illness as a reason for their behaviour. Apparently, they could not accept responsibility for the steps which they had taken. That is, as lawyers they should not have acted in the way they did, but because they were ill, they had no other choice.

In our discussion of the “older” and “younger” disbarred lawyers, there were apparently different career lines. Given the fact that many of the “older” lawyers may have been in solo, general practice from graduation until disbarment (an average of twenty-three years) they seemingly had operated successfully within this situation. Their younger colleagues, on the other hand, appear to have been adversely affected.

What appears relevant for the older lawyers is the onset of factors associated with age which appears to have triggered their subsequent behaviour patterns. Physical illness, much more prevalent for them than for the younger lawyers, appeared to affect their ability to cope with practice. Once ill, they began to ignore cases and forget undertakings. Then complaints were lodged. The situation might have appeared to them as too difficult to handle, and so the cycle kept repeating itself until they were disbarred.

The higher incidence of the use of alcohol among these older lawyers also appeared to be associated with age. Their practice situation may well have been difficult for them for many years, and they may have been drinking to ease its burdens. It could well be that a number of years of consistent, heavy drinking elapsed before alcohol had the effect of incapacitation. On the other hand, these lawyers may have begun to drink heavily at a later stage in life when certain pressures arose. Added to a possible deteriorating physical and mental condition, the effect of alcohol could be so deleterious as to affect the individual’s ability to carry on his practice.

Since our focus has been on the disbarred lawyer, we have emphasized those aspects of his career which appear relevant to the behaviour for which he was subsequently sanctioned as well as the points in the careers of these lawyers at which a step in one direction is likely a determinant of subsequent steps.

What we have seen is the interaction between the situation of the solo lawyer in general practice and the special concern by the profession about trust fund activities. One cannot help but speculate about who would be involved if this concern were to focus on other areas of practice such as fee-splitting, touting or negligence. It seems likely that the same type of lawyer would be affected. As in society at large, it is the lower stratum which most often encounters the enforcement agencies. They are without the institutional supports enjoyed in other sectors. For the solo lawyer, the combined effect of competition and the complexities of practising alone without the support of colleagues and clients who demand scrupulousness, would likely bring him into contact once again with the governing body of the Law Society.

72 28% of the “older” lawyers indicated alcohol as a factor in their behaviour, compared with one “younger” lawyer.