



DISCIPLINE CASE *DIGEST*

Case 13-01

Member:	James Ronald Nadeau
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 28, 1990
Particulars of Charges:	Professional Misconduct (60 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [Integrity] [x23]<ul style="list-style-type: none">- Misappropriation – [x5]- Backdating statements of account – [x13]- Breached condition of practice – [x2]- Contravening a Society directive – [x1]- Misleading the Society – [x1]- Practicing while suspended – [x1]▪ Breach of Rule 5-43(1)(a) of the <i>Rules of the Law Society of Manitoba</i> [failure to deposit trust funds into trust] [x11]▪ Breach of Rule 5-43(1)(c) of the <i>Rules of the Law Society of Manitoba</i> [failure to render a statement of account and overdrawing trust ledger] [x19]▪ Breach of Rule 5-43(1)(f) of the <i>Rules of the Law Society of Manitoba</i> [overdrew trust ledger] [x1]▪ Breach of Rule 5-41 of the <i>Rules of the Law Society of Manitoba</i> [failure to maintain separate trust ledgers] [x1]▪ Breach of Rule 5-48.1(1)(a) of the <i>Rules of the Law Society of Manitoba</i> [failure to maintain a general book of original entry] [x1]▪ Breach of Rule 5-48.1(1)(b) of the <i>Rules of the Law Society of Manitoba</i> [failure to maintain an accounts receivable ledger or other suitable system that records for each client] [x1]▪ Breach of Rules 5-64(3) and 5-64(4) of the <i>Rules of the Law Society of Manitoba</i> [failure to respond to the Law Society within 14 days] [x1]▪ Breach of Rule 2.06(1) of the <i>Code of Professional Conduct</i> [charging fees that were not fair and reasonable] [x1]▪ Breach of Rule 5-72(2)(a) of the <i>Rules of the Law Society of Manitoba</i> [failure to file Form D] [x1]
Plea:	Not Guilty
Date of Hearing:	January 21, 22 and 23, 2013 and May 24, 2013
Panel:	<ul style="list-style-type: none">▪ Richard I. Good (Chair)▪ Patricia L. Fraser▪ Keely Richmond (Public Representative)

- Counsel:**
- Darcia A.C. Senft for The Law Society of Manitoba
 - Member Self Represented – January 21, 22 and 23, 2013
 - Gavin Wood for the Member – May 24, 2013
- Disposition:**
- Disbarment
 - Costs of \$20,000.00

Misappropriation / Breach of Trust Accounting Rules / Breach Conditions of Practice / Failure to Respond / Ungovernability

Facts

In the course of representing 3 different clients, Mr. Nadeau misappropriated trust funds on 4 different occasions for a total amount of \$5,138.20.

On 13 different occasions, he backdated statements of account relating to 10 client matters in order to have the account coincide with the date when funds had been taken on account of fees. Mr. Nadeau previously had conditions placed on his practising certificate one of which was that he was prohibited from maintaining a trust account or having any signing authority on any trust account. He took steps to circumvent that condition by using two blank trust cheques that had been signed by his supervisor. He also acted in contravention of a Law Society directive. In addition, Mr. Nadeau misled the Society's auditor during the course of the investigation. In total, he was convicted of 20 charges of breaching his duty to act with integrity.

On 11 occasions, Mr. Nadeau failed to deposit client trust monies into trust in relation to 8 different clients. On 17 different occasions relating to 14 client matters, Mr. Nadeau withdrew money from trust to pay for fees & disbursements without first sending statements of account to the clients. On one client matter, he overdrew the client's trust ledger.

Mr. Nadeau also failed to deposit monies which were received for payment of a statement of account into his general account and failed to record his receipt of those funds in an accounts receivable ledger or other suitable system.

Mr. Nadeau also failed to respond to a letter from the Society within the time prescribed. On another client matter, he charged fees that were not fair and reasonable. As well, Mr. Nadeau failed to file his Form D by its due date.

Plea

Mr. Nadeau entered a not guilty plea with respect to each of the 60 charges of professional misconduct.

Decision and Comments

The Society tendered five affidavits from the following deponents: the Society's Legal Counsel for the Complaints Resolution Department, Director of Complaints Resolution Department, Auditor, Assistant Director of Technology, and Mr. Nadeau's former legal assistant. The panel allowed all of the affidavits into evidence in accordance with s. 71(1) of *The Legal Profession Act*. Mr. Nadeau was given the opportunity to cross examine the deponents and chose to cross examine three of them. Various witnesses were also called. After considering all of the evidence the panel found Mr. Nadeau guilty of 54 charges of professional misconduct as outlined in the facts described. The panel found Mr. Nadeau not guilty of six charges as follows: one additional charge

of misappropriation, one instance of breaching a condition of practice, practising law while suspended, two additional charges of breaching trust accounting Rule 5-43(1)(c) of the *Rules of the Law Society of Manitoba* (taking fees without rendering accounts), and one charge of breaching Rule 5-41 of the *Rules of the Law Society of Manitoba* (failing to maintain separate client trust ledgers for two client matters).

Penalty

The panel noted that misappropriation of client funds is the most serious of all offences. However, the breaches of the trust accounting rules and the “utter disregard” of the order of a previous discipline panel including the lack of compliance with the directives and requests of Society officials in their attempt to enforce the provisions of that order were also found to be extremely serious. Given the nature of his prior discipline history and the nature of the current matters, the panel concluded that Mr. Nadeau is ungovernable and would likely re-offend if allowed to practice. For the protection of the public and the maintenance of public confidence in the integrity of the legal profession, the panel determined that Mr. Nadeau be disbarred and further ordered that he be required to pay costs in the amount of \$20,000.00 as a contribution towards the costs associated with the investigation, prosecution, and hearing of the matter.