



# DISCIPLINE CASE *DIGEST*

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Case 13-06

<b>Member:</b>	Kenneth Bryan Young
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 25, 1974
<b>Particulars of Charges:</b>	Professional Misconduct (2 Counts): <ul style="list-style-type: none"><li>▪ Breach of Rule 1.01(1) of the <i>Code</i> [integrity] [x2]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	September 9, 2013
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Lori Ferguson Sain (Chair)</li><li>▪ Jacob Janzen</li><li>▪ Lorne Gibson (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Gavin Wood for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$2,000.00</li><li>▪ Costs of \$5,000.00</li></ul>

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## Integrity

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### Facts

A member who was required to practice under supervision proposed that Mr. Young act as his supervisor. The Society wrote to Mr. Young and outlined the terms and conditions that Mr. Young would have to accept in order to become Member A's supervisor. This included the need to have complete control over Member A's trust accounting and the daily bookkeeping. Mr. Young agreed to accept the terms and conditions outlined by the Society in respect of his supervision of Member A.

Following a 60 day suspension for prior misconduct, Member A resumed practice under Mr. Young's supervision. When new concerns arose with respect to Member A's conduct an investigation by the Society determined that some clients made deposits on Member A's "Cash Link" card accounts in relation to fees or retainers. Not all of the Cash Link funds received from clients were withdrawn from Member A's Cash Link card account and then deposited into the firm's trust account. On some files, funds were paid from Member A's trust account to his general account for fees, but statements of account were not rendered on time or at all. On other files, statements of account were rendered but appeared to have been backdated to the dates when the funds were removed from Member A's trust account.

The investigation into Member A's conduct was concluded and numerous serious charges of professional misconduct were authorized against him. Much of Member A's questionable conduct occurred during Mr. Young's period of supervision. Mr. Young had reported to the Society on his supervision of Member A and advised that all was well with the exception of Member A's use of a "Cash Link card." Mr. Young reported that he had discussed the Cash Link card matter with Member A and that the situation was under control.

Mr. Young acknowledged that he had pre-signed blank trust cheques for Member A and that he had neglected to inform the Society of this when providing his supervisory report letter. He advised that he had been unaware of the irregularities with respect to the billing of, and taking payment from Member A's clients and that, generally speaking, he had not been aware of Member A's use of the Cash Link card account(s) until the middle of August 2011.

Mr. Young was charged with failing to properly supervise Member A's practice and the firm trust account to the extent required by the Society. He was also charged with having represented to the Society that Member A had complied with the conditions imposed upon him when Mr. Young knew, or ought to have known that he had not.

### **Plea**

Mr. Young entered a plea of guilty to the charges.

### **Decision and Comments**

The Panel of the Discipline Committee made a finding that the conduct of Mr. Young as set out in the Amended Citation and in the Statement of Agreed Facts constituted professional misconduct.

The Panel commented that an Undertaking to the Society to supervise another member is a serious matter and not merely a favour to the Society or to the member being supervised. Supervision of a member's practice must be discharged with care and integrity and not in name only.

### **Penalty**

The Panel accepted the joint recommendation made by Counsel for the Society and for Mr. Young in respect of an appropriate penalty. The Panel made an order that Mr. Young:

- (a) pay a fine in the amount of \$2,000.00; and
- (b) pay the sum of \$5,000.00 to the Society as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.