



# DISCIPLINE CASE *DIGEST*

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Case 14-03

<b>Member:</b>	John Slawko Petryshyn
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 29, 1971
<b>Particulars of Charges:</b>	Professional Misconduct (2 Counts): <ul style="list-style-type: none"><li>▪ Breach of Rule 7.2-11 of the <i>Code of Professional Conduct</i> [failure to comply with trust conditions]</li><li>▪ Breach of Rule 7.2-5 of the <i>Code of Professional Conduct</i> [duty to lawyers]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	October 6, 2014
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ William Haight (Chair)</li><li>▪ Jennifer Cooper, Q.C.</li><li>▪ Miriam Browne (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>▪ Member Self Represented</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Costs of \$2,000.00</li></ul>

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## Failure to Comply with Trust Condition/Duty to Lawyers

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### Facts

In March 2012, Mr. Petryshyn was retained by a client to act with respect to the sale of real property. Mr. Petryshyn's client had agreed to sell the real property for the price of \$145,000.00 with a possession date of May 19, 2012. The client had two undischarged mortgages from two financial institutions registered against the title to her real property. At the end of April 2012, Mr. Petryshyn requested from the financial institutions the payout amount of the mortgages as at May 19, 2012. On or about May 3, 2012 Mr. Petryshyn was advised by one of the financial institutions that the payout figure for the first mortgage would be in excess of \$130,000.00 with per diem interest payable on that amount until the date the mortgage was paid in full. On or about May 10, 2012, Mr. Petryshyn was advised by the other financial institution that the payout figure for the second mortgage would be in excess of \$25,000.00 with per diem interest payable on that amount to the date the mortgage was fully paid. Accordingly, Mr. Petryshyn was aware, as of May 10, 2012, that the first and second mortgages exceeded the purchase price of the real property.

By letter dated May 12, 2012, the purchaser's solicitor imposed standard trust conditions upon

Mr. Petryshyn which he accepted including that he would obtain all necessary discharges, file them with the Land Titles Office, and provide an updated Status of Title confirming the discharge of the first and second mortgage. After paying off the first mortgage, the balance of sale proceeds left in Mr. Petryshyn's pooled trust account was insufficient to pay off the second mortgage. Although he obtained a discharge of the first mortgage in July 2012, Mr. Petryshyn failed to register the discharge at the Winnipeg Land Titles Office until August 2013. Mr. Petryshyn also failed to obtain a discharge of the second mortgage as required.

Mr. Petryshyn also failed to provide to the purchaser's solicitor an updated Status of Title confirming the discharge of the first and second mortgage. Mr. Petryshyn failed to respond to two letters sent to him by the purchaser's solicitor and he failed to respond to a telephone message left for him by the purchaser's solicitor.

### **Plea**

Mr. Petryshyn entered a plea of guilty to the charge of breaching trust conditions and to the charge of failing to respond.

### **Decision and Comments**

The panel found Mr. Petryshyn guilty of the charges and noted that our system relies heavily on the principle that lawyers must honour trust conditions once they are accepted. It is important for the public that this principle be followed strictly. There were consequences for the purchaser that went beyond inconvenience and the panel viewed that as an aggravating circumstance.

### **Penalty**

The Panel accepted the joint recommendation made by the parties with respect to the appropriate penalty. The Panel made an order that Mr. Petryshyn:

- (a) be reprimanded; and,
- (b) pay the sum of \$2,000.00 to the Society as a contribution toward the costs associated with the investigation, prosecution and hearing of this matter.