



# DISCIPLINE CASE *DIGEST*

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Case 15-05

<b>Member:</b>	<b>James Graeme Earle Young</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 16 2005
<b>Particulars of Charges:</b>	Professional Misconduct (19 Counts): <ul style="list-style-type: none"><li>▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [integrity] [x8]</li><li>▪ Breach of Rule 3.2-1 of the <i>Code of Professional Conduct</i> [quality of service] [x4]</li><li>▪ Breach of Rule 3.7-9 of the <i>Code of Professional Conduct</i> [manner of withdrawal] [x1]</li><li>▪ Breach of Rule 5.1-5 of the <i>Code of Professional Conduct</i> [duty to court] [x3]</li><li>▪ Breach of Rule 7.2-1 and 7.2-5 of the <i>Code of Professional Conduct</i> [duty to lawyers] [x3]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	July 6, 2015
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Jacob Janzen (Chair)</li><li>▪ Grant Driedger</li><li>▪ Jim Wolfe (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>▪ Steve Vincent for the Member</li></ul>
<b>Date of Decision:</b>	Oral Decision: July 6, 2015 Written Reasons: September 23, 2015
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Suspended for a period of eight months commencing July 6, 2015</li><li>▪ Costs of \$15,000.00</li></ul>

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## INTEGRITY / QUALITY OF SERVICE / DUTY TO LAWYERS / DUTY TO COURT

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### Facts

Mr. Young entered an admission before the Panel of the Discipline Committee to 19 charges of professional misconduct stemming from three citations and in regards to seven separate client matters.

Mr. Young was retained by a client on two related estate matters. During the period of the retainer, Mr. Young failed to provide his client with progress reports on a timely or regular basis despite repeated requests; on two occasions did not fulfill commitments made to his client to prepare a statement of defence; failed to reply within a reasonable period of time, or at all, to numerous communications from his client; failed to respond to several communications from counsel for The Public Trustee of Manitoba and failed to be punctual in fulfilling a commitment to counsel for the Public Trustee. Upon being discharged by his client, Mr. Young failed to deliver his client's file within a reasonable period of time.

Mr. Young was retained by a client in a civil matter. During the course of the retainer, Mr. Young: failed to file and serve a brief; failed to communicate with his client with respect to an affidavit that Mr. Young had received from the defendant; and failed to attend court on two occasions, resulting in costs being awarded against his client in both incidents and the client's motion being dismissed. The client only became aware of the costs orders upon receiving correspondence from the Winnipeg Land Titles Office regarding judgments that were registered against real property pursuant to the orders.

Mr. Young was retained by a client in a domestic litigation matter. Mr. Young misled the court when he advised the court that he had filed a brief when, in fact, he had not done so.

Mr. Young was retained by a client in a family law matter. Mr. Young submitted a request for an adjournment of a case conference and expressly indicated that the request was being made with the consent of opposing counsel, when such was not the case. He failed to attend the case conference even though he was aware that opposing counsel had not consented to the adjournment request. He then attempted to mislead the Law Society when responding to concerns that were raised about his conduct.

Mr. Young was retained by a client in a civil matter. Over a period of a few months, Mr. Young failed to respond to communications from opposing counsel. When he did reply on two occasions, Mr. Young advised that he would send the requested information but then failed to do so. Mr. Young did send the information upon receiving a copy of a complaint submitted against him by opposing counsel. He misled opposing counsel and the Society by indicating that his delay in responding to a Request for Particulars was due in part to his difficulty obtaining instructions from his client when such was not the case.

Mr. Young was retained by a client in a domestic litigation matter. On two occasions during the course of the retainer, Mr. Young: failed to file and serve material in support of his client's position prior to scheduled hearings of motions in court; failed to file and serve a document required by the court prior to a case management conference and on two occasions failed to advise his client of the time and location of court hearings, despite requests made by the client to attend such hearings.

Mr. Young further failed to appear personally in court on behalf of his client and instead arranged to have an Articling Student-at-Law, with limited knowledge of the area of law and no familiarity with the client's file, to appear on the matter. Mr. Young did not advise the Articling Student-at-Law that opposing counsel would be presenting argument in court that the client's position was in opposition to that of the opposing party on a number of issues, that no evidence had been filed in support of the client's position and that opposing counsel would be seeking costs. Accordingly, the student was not able to represent the client effectively at the hearing. Mr. Young then failed to provide his client with a progress report on a timely basis after the hearing and as a result he placed his client at risk of being found in contempt of an order of the court.

Mr. Young led the client to believe that he would advance his position in court on a specific date, despite the fact that Mr. Young had not filed any evidence in court in support of his client's position and would not have been able to advance his client's position. With respect to this matter, Mr. Young characterized the hearing of the opposing party's motion as one wherein all of the issues had been resolved between the parties when, in fact, such was not the case.

Mr. Young misled the Articling Student-At-Law by advising that the motion scheduled to be heard in his client's matter was for the purpose of entering into a consent order when such was not the case.

During the course of the Society's investigation Mr. Young misled the Society. He failed to accurately describe the nature of the hearing and upon being questioned specifically about why he did not appear personally at the hearing, Mr. Young failed to advise the Society that one of the reasons he failed to appear personally was because he was required to and did appear personally at another hearing in court at exactly the same time and on the same date upon which the hearing took place.

Mr. Young was retained by other clients, who were defendants in a personal injury matter. He represented both an individual client and corporate clients in that matter.

With respect to the individual client, Mr. Young filed a Statement of Defence on behalf of his client without apprising the client of the allegations against the client, obtaining the client's instructions or reviewing the Defence with the client. Prior to filing a defence, Mr. Young did not advise the client of the client's right to obtain independent legal advice and/or to retain separate counsel. He did not advise the client of these rights until the day of the client's Examination for Discovery, almost three years after filing the Defence. There was no communication with this client in the time period after filing the Defence until the day of a scheduled Examination for Discovery. Mr. Young did not consult with the client prior to confirming the client's availability to be discovered on specific dates and failed to ensure he could meet with the client in order to prepare the client in advance of the Discovery. Therefore, he failed to prepare the client on a satisfactory basis.

With respect to all clients in this matter, Mr. Young: failed to file a sworn Affidavit of Documents on a timely basis; failed to produce an Affidavit of Documents on the date consented to, resulting in costs being ordered against the clients; failed to appear at a hearing of a motion to strike the Defence resulting in an Order striking out the Defence with costs being ordered against his clients; failed to file a notice of appeal on behalf of the clients within the prescribed time limits; advised opposing counsel he would file a motion requesting an extension of time within which to file the notice of appeal and advised it would be returnable on a specific date; advised he would adjourn the motion and the notice of appeal that had been filed, but then failed to file the motion and failed to ensure the notice of appeal was adjourned; failed to appear in court to speak to the adjournment of the notice of appeal that he had filed; subsequently failed to file a consent order within 7 days, as directed by the court; failed to send his draft of the consent order to opposing counsel for approximately one month; and, failed to file the appeal factum prior to filing the consent order or within the time prescribed.

With respect to opposing counsel in this matter, Mr. Young made representations that he would file and serve a Statement of Defence by a specific date but failed to do so. Over a period of about 9 months, he also failed to respond to numerous letters he received from opposing counsel.

Mr. Young misled opposing counsel regarding circumstances relating to an examination for discovery that had been scheduled for his individual client. Specifically, he advised that he had confirmed his client's availability for discovery and that he arranged to meet with his client prior to Discovery and that he was not aware why his client did not attend discovery- all of which representations were untrue.

With respect to his dealings with the court, Mr. Young was directed to file a clean copy of an order the day after it was made but he did not file that order until approximately one year later. Mr. Young further undertook to the court and to opposing counsel that he would file and serve certain documents by a specified date but he failed to do so. The court then directed him to comply forthwith and he failed to comply with that direction. Mr. Young did not provide the document until later and it was incomplete. He failed to ensure that he had properly adjourned a notice of appeal that he had filed and it remained on the court list; however, Mr. Young failed to appear in court on that date. Subsequently, the court granted a consent order extending the time within which Mr. Young was to file the notice of appeal. He was directed to file the order within 7 days but failed to comply with that direction.

## **Plea**

Mr. Young entered a plea of guilty to 19 counts of professional misconduct.

## **Decision and Comments**

The panel accepted the principle that there must be clear and cogent reasons before departing from a joint recommendation made by experienced and competent counsel and found no such reasons which would justify a departure from the jointly recommended disposition.

Apart from that, the panel was satisfied that the proposed disposition was a fair and reasonable one as it fell squarely within the range of penalties imposed by other tribunals for similar charges in similar cases. Although Mr. Young's transgressions were not as serious as those in some other cases, this factor was offset by the large number of breaches that were committed. The panel was satisfied that the recommended disposition struck a reasonable balance between protecting the public interest and providing Mr. Young with an opportunity to resume his professional practice.

## **Penalty**

The Panel accepted the joint recommendation of counsel that Mr. Young:

- (i) Be suspended from the practice of law for a period of eight months commencing July 6, 2015; and
- (ii) Be required to pay costs to the Society in the amount of \$15,000.00 as a contribution towards the costs associated with the investigation, prosecution, and hearing of this matter.