



DISCIPLINE CASE *DIGEST*

Case 15-10

Member:	Member A
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1979
Nature of Hearing:	Pardon Application
Date of Hearing:	January 12, 2016
Panel:	<ul style="list-style-type: none">▪ Irene Hamilton (Chair)▪ David Swayze▪ Jim Wolfe (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Member Self Represented
Date of Decision:	January 12, 2016
Disposition:	<ul style="list-style-type: none">▪ Pardon Granted

Pardon Application

Facts

In 1992 Member A was censured by formal caution offered by the Discipline Committee (as the present Complaints Investigation Committee was then called) and accepted by the Member. In accepting the formal caution at the time Member A acknowledge having breached a trust condition imposed by opposing counsel in the course of dealing with a domestic matter, in which Member A acted for the husband.

The parties had agreed to a sale of their marital home and agreed that Member A would act for both of them on the sale. Counsel for the wife delivered to Member A an Order to pay in trust that the husband execute the Order to Pay without amendment of any sort and that Member A return a fully executed copy to counsel for the wife immediately thereafter. Member A's client did sign the Order to Pay but Member A did not send a fully executed copy to the wife's lawyer. The Order to Pay required that the net sale proceeds be held by Member A's firm in trust "pending resolution of the marital property division" and that thereafter the wife's share be paid in trust to her counsel. Upon completion of the sale Member A paid out one half of the net proceeds to her client and continued to hold in trust the wife's half. Member A advised counsel for the wife immediately that she had done so. Thereafter negotiations continued as to settlement of remaining issues between the spouses. During the course of those negotiations counsel for the wife requested that a portion of the wife's share of the net sale proceeds be paid out on account of a certain debt and Member

A complied. A final settlement agreement was reached and on August 9, 1991 a consent final Judgment was pronounced on August 15, 1991. Member A then paid out the remaining balance of the wife's share of the net house sale proceeds to her counsel. The wife's counsel complained to the Society of the breach of trust condition in December, 1991 well after the matter had been fully resolved and over a year after Member A had reported how the net sale proceeds were handled. No prior complaint had been made to Member A as to the handling of those proceeds.

The member applied for a pardon from the formal caution pursuant to Law Society Rule 5-101.1(a).

Decision and Comments

Member A met all of the criteria under Rule 5-101.1(3) and the Society was not aware of anything that would speak against a pardon. The Society, therefore, was not opposed to the application and supported it. The Panel considered the circumstances leading to the caution and noted that there was no loss and that the complaint was received after the matter was concluded. They noted also that 23 ½ years had passed since the censure, that Member A had a clear record since then and that in her personal life Member A has been actively involved in volunteer activities. The Panel noted as well the absence of matters reflecting poorly on her character. The Panel concluded that it is fair to conclude that the censure no longer reflects adversely on her character and granted the pardon.