



# DISCIPLINE CASE *DIGEST*

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Case 15-16

<b>Member:</b>	<b>David Michael Bradley</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 20, 1991
<b>Particulars of Charges:</b>	Professional Misconduct (22 Charges): <ul style="list-style-type: none"><li>▪ Failure to Act with Integrity – including misappropriation and misleading clients and others (4 Charges)</li><li>▪ Conflict of Interest (2 Charges)</li><li>▪ Failure to Serve (5 Charges)</li><li>▪ Failure to Respond to communications from opposing counsel (2 Charges)</li><li>▪ Dishonourable Conduct by having client sign blank declaration (1 Charge)</li><li>▪ Failure to inform clients of errors or omission (2 Charges)</li><li>▪ Failure to notify insurer of potential claim (1 Charge)</li><li>▪ Failure to notify client of receipt of trust funds (2 Charges)</li><li>▪ Charging a fee that was not fair, reasonable and fully disclosed (1 Charge)</li><li>▪ Failure to pay out trust funds expeditiously (1 Charge)</li><li>▪ Acting without instructions (1 Charge)</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	February 19, 2016
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ James McLandress (Chair)</li><li>▪ Jennifer Cooper, Q.C.</li><li>▪ Marston Grindey (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Rocky Kravetsky for The Law Society of Manitoba</li><li>▪ Steve Vincent for the Member</li></ul>
<b>Date of Decision:</b>	Oral Decision: February 19, 2016
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Disbarment</li><li>▪ Costs of \$22,500.00</li></ul>

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**Failure to Act with Integrity (Misappropriation and Misleading) /  
Conflict of Interest / Failure to Serve**

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## **Facts**

### Overview

In a statement of agreed facts Mr. Bradley admitted to having committed 22 offences, contrary to 10 separate provisions in the *Code of Professional Conduct*, in addition to breaches of the accounting rules. His offences affected clients in 10 different matters. He repeatedly lied to his clients, lied to other lawyers and failed to provide the quality of service his clients were entitled to expect. He misappropriated trust funds as a means of covering up his lies.

### Matter #1

Mr. Bradley acted for a property owner in a fire insurance claim matter. After the insurer denied coverage Mr. Bradley received instructions necessary for the completion of a Proof of Loss form and for the filing of a statement of a claim. He had the client's officer sign a Proof of Loss form in blank but did not complete the form, did not deliver Proof of Loss to the insurer and did not file a statement of claim. He was not in contact with the insurer after its denial of coverage. After realizing that the limitation to sue had passed Mr. Bradley did not tell his client that its claim was statute barred and did not report the matter to his insurer. He made a series of false statements to the client over a period of several years so as to make it appear that he was actively pursuing a claim when he was not. These included statements indicating examinations for discovery were being scheduled, that there were other proceedings to take place in court and that communications were taking place with the insurance company's lawyer. Approximately 3 ½ years after his last actual dealing with the insurer when he was suspended from practice as a result of an earlier disciplinary matter, Mr. Bradley finally told the client that he had missed the limitation and that there could be no recovery from the insurer. He then entered into negotiations with the client in an effort to settle the client's negligence claim arising from his own errors without referring the client to independent counsel. He reported the matter to his insurer only after those negotiations failed.

### Matter #2

Mr. Bradley was retained in 2012 to act for clients who had been gifted a time share condominium interest in vacation property for the purpose of effecting registration of the title in their names. This required obtaining from the transferor's lawyer a registerable transfer of land and a "gifting letter" satisfactory to the Land Titles Office as well as an assignment document to be filed with the management of the property. Mr. Bradley received an assignment document in June 2012 but did not then take any steps to obtain a transfer of land. While that was pending property taxes were assessed and condominium fees accrued. Mr. Bradley received notice from the transferor's lawyer of these assessments from time to time but did not advise his clients of them, or of the consequences of not paying them in a timely fashion. Finally, in March 2013 Mr. Bradley had in hand all of the documents necessary to effect the transfer. He did not, however, contact his client to sign the "gifting letter" and did not take any other steps to effect the registrations until March 2015, after a complaint had been received by the Society. He did not respond to 13 communications from the transferor's lawyers between March 2013 and February 2015. The transfer was not completed until April 2015.

### Matter #3

Mr. Bradley acted for the transferor and transferees of a house property and for the transferees' mortgage lender in effecting the transfer of the property valued at \$91,000.00 for no actual consideration. The transferor was an elderly person in ill-health. The transferees were his next door neighbours who were in financial difficulty. The mortgagee was a high interest rate "lender of last resort". Mr. Bradley was initially asked by the mortgagee to attend upon the execution of a transfer of land by the transferor and for that purpose he met with the transferor and attended upon execution of the transfer of land in the form provided. He then accepted a retainer to act for the transferees on the same transaction, including in relation to their mortgage financing, which

required security as against both the newly transferred property and their existing residence. As of December 17, 2014 Mr. Bradley was acting for all 3 parties. As of that date he was aware that the transfer was being made for no consideration, that the transferor expected to be able to continue to reside in the house that he was transferring, that the transferees were in financial difficulty including in default of the existing mortgage on their own home and that the terms of the new mortgage would require the transferees to make much greater payments than the mortgage upon which they had defaulted. Mr. Bradley did not, however, advise the transferor of the information he had come to have as to the transferees' arrangements, nor as to the effect of those facts. He did not seek the transferor's consent to act for the transferees and their lender. He did not tell the transferees that he was also acting for their lender and the transferor and did not obtain the informed consent of the transferor to act for the all parties. Upon receiving for registration the transfer and mortgage documents the Land Titles Office required a certificate of independent legal advice demonstrating that advice as to certain specific matters had been given to the transferor. Mr. Bradley submitted such a certificate even though he was not, at that time, an independent advisor.

#### Matter #4

In November 2011 Mr. Bradley was retained by clients who had purchased property and who alleged that the vendor had breached the purchase and sale agreement causing them damages. Mr. Bradley accepted instructions to pursue a claim against the vendor and against realtors who had brokered the agreement. In June 2012 Mr. Bradley caused a statement of claim to issue against 4 defendants, being the vendor, a real estate company and two real estate salespersons. Prompt service was effected on the vendor by one of his clients but Mr. Bradley took no steps to serve the other defendants. The vendor retained counsel who contacted Mr. Bradley by two letters in July 2012. Mr. Bradley did not respond to the vendor's lawyer and did not take any other steps to advance his clients' claim until October 2014 when he communicated a settlement offer. He thereafter took no further steps in the matter.

#### Matters #5, 6 and 7

Mr. Bradley acted for a lender on three separate collection matters. In each of these matters judgment had been signed by default and in each case Mr. Bradley caused a notice of garnishment to issue to enforce the judgment. In each case monies were paid into court pursuant to the garnishment and Mr. Bradley obtained payment out of those proceeds. In March and April 2013 he received a total of \$11,191.91 in garnishment proceeds belonging to his lender client. He did not advise his client that he had received these funds. He deposited the funds to the credit of another client for whom he was acting in an unrelated matter (Matter #8, below) and eventually paid out \$9,000.00 to that client and paid the balance to his firm on account of fees ostensibly due from that other client.

#### Matter #8

Mr. Bradley was retained in May 2004 by a client who wished to pursue a claim against his property insurer for damage sustained to his property in 2003. In February 2005 Mr. Bradley accepted instructions from the client to issue a statement of claim against the insurer and received from the client \$300.00, which was deposited to his firm's trust account to the client's credit. He did not, however, make any contact with insurer and did not issue a statement of claim as instructed. The limitation period for filing a claim passed. Mr. Bradley did not tell the client that the limitation had passed and did not advise the client to seek other counsel. He carried on as though there was an ongoing outstanding lawsuit. In August 2010 Mr. Bradley accepted instructions from his client as to the settlement he would accept from the insurer. Mr. Bradley did not tell the client that there was no prospect of obtaining such a settlement because of the lapse of the limitation to sue. From September 2012 through April 2013 he led the client to believe that trial dates would soon be set and again took instructions from the client as to settlement. He then led the client to believe that settlement discussions were taking place with the insurer. After appropriating funds from another

client (Matters 6, 7 and 8 above), he reported to his client that the insurer had agreed to pay \$10,000.00, and that he would limit his account to \$1,000.00. He then prepared and had his client sign a release. He paid to the client \$9,000.00 and reported that he had held back \$1,000.00 to pay his account. After payment of \$9,000.00 to his client there remained \$2,491.92 recorded in his trust records as credited to the client (of which \$2,191.92 was the balance of the other client's funds) and in September 2013 Mr. Bradley prepared a statement of account addressed to the client in that total amount and transferred the remaining fund to his firm's general account. The September 2013 account was never sent to the client and the client was never made aware that any amount more than \$1,000.00 had been charged to him.

#### Matter #9

While acting for a creditor client in a collection matter Mr. Bradley caused default judgment to be signed against the debtor in September 2008 and registered a certificate of judgment against the debtor's property. In May 2011 Mr. Bradley received payment of the full amount of the judgment, including interest to the date of payment and provided a discharge of the certificate of judgment and notice of satisfaction for use by the debtor. A total of \$57,270.52 was paid into Mr. Bradley's trust account on May 12, 2011. Mr. Bradley did not advise the client that the funds had been received until April 9, 2013 when he reported that funds had been received, but did not say that he had been holding the funds without conditions for almost 2 years. He issued a statement of account to the client in the amount of \$16,200.91 and paid out the balance. He did not, however, transfer the portion held back for fees to the firm's general account.

#### Matter #10

Mr. Bradley acted for a creditor client who was the respondent to an application served on August 12, 2014 challenging the validity of certain security claimed by the client. On a court appearance in January 2015 costs of \$250.00 were awarded against the client payable to the applicants. Mr. Bradley did not advise the client of the costs award against it nor the reasons for it. The application was set for contested hearing on February 23, 2015. Mr. Bradley did not file any materials in response to the application and did not advise the client that it was scheduled to be heard. On February 20, 2015, without seeking instructions from the client Mr. Bradley entered into a settlement agreement binding the client by which the client released its claim against the applicant and the client was to pay \$10,250.00 to the applicants (including the previously awarded costs). Mr. Bradley then directed his firm to draw a cheque against the funds still held in trust under Matter #9, in which the client was a related entity to this one. The funds so paid out were paid without the knowledge of either the client under Matter #9 or the client respondent in this matter.

#### **Plea**

Mr. Bradley entered a guilty plea to all charges.

#### **Decision and Comments**

The Panel accepted Mr. Bradley's plea of guilty to all 22 charges. A statement of agreed facts was filed in which he admitted the particulars of his misconduct and consented to findings of professional misconduct on all charges and also consented to the penalty and costs proposed by the Society.

#### **Penalty**

The Panel ordered that Mr. Bradley be disbarred and that he pay costs to the Society of \$22,500.00. They commented on the number of offences and the number of clients affected and noted, as well that Mr. Bradley had previously been disciplined. In addition to having repeatedly lied to his clients, he had lied to his partners and to the previous Discipline Panel. He had misappropriated funds to cover up his misconduct. Mr. Bradley was found to be unworthy of being a lawyer. The offences

were extremely serious carrying the presumed penalty of disbarment. Mr. Bradley's cooperation with the Society, his acceptance of responsibility and expressions of regret were noted but these did not take away from the seriousness of what he did.