



DISCIPLINE CASE *DIGEST*

Case 16-05

Member:	Kevin Allan MacDonald
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1986
Particulars of Charges:	Professional Misconduct (5 Counts): <ul style="list-style-type: none">▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust condition]▪ Breach of Rule 7.2-5 of the <i>Code</i> [duty to lawyers – failing to respond to communications]▪ Breach of Rule 3.2-1 of the <i>Code</i> [quality of service] [x2]▪ Breach of Rule 5-34 of the <i>Rules</i> and Rule 7.8-2 of the <i>Code</i> [failure to notify insurer]
Plea:	Guilty
Date of Hearing:	November 2, 2016
Panel:	<ul style="list-style-type: none">▪ Brian Pauls (Chair)▪ Jennifer Cooper, Q.C.▪ Jim Wolfe (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Steve Vincent for the Member
Date of Decision:	Oral Decision: November 2, 2016
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Costs of \$4,500.00

Breach of Trust Condition / Duty to Lawyers / Quality of Service / Failure to Notify Insurer

Facts

Mr. MacDonald acted for vendors of real property located in Pine Falls, Manitoba in a private sale. The property was subject to an old caveat filed by the Abitibi Paper Company when it administered the town and provided municipal services. The caveat contained building restrictions, a right of first refusal in favour of Abitibi on sale and imposed obligations in respect of costs of certain services.

Mr. MacDonald met with the clients to review the offer to purchase before acceptance. He did not cause the title to be searched, did not inspect the caveat and did not advise concerning its effect on the sale. On closing, Mr. MacDonald accepted a trust condition that he would deliver to the purchasers' lawyer a registerable discharge of the caveat. Title issued on July 21, 2008 and Mr. MacDonald paid out the sale proceeds to his client without having attended to discharge of the caveat. Counsel for the purchasers made follow up inquiries of Mr. MacDonald as to compliance with his trust condition on at least 16 occasions between 2008 and 2015, but received responses on only two occasions. While those two responses were to the effect that Mr. MacDonald was attending to obtaining discharge of the caveat, it was not discharged. Mr. MacDonald made an unsuccessful attempt in 2011 to engage a process for discharge through the Land Titles Office and in 2013 and 2014 he initiated efforts to contact a successor to Abitibi in unsuccessful efforts to obtain a voluntary discharge. The caveat was not discharged until after the purchasers' lawyer complained to the Society. Mr. MacDonald then made the necessary court application and in August 2016, an order discharging the caveat was made and registered. Mr. MacDonald did not communicate with his clients after closing and they were unaware that they faced potential claims for not having delivered clear title. Mr. MacDonald did not inform his insurer of the potential of a claim against him until after the purchasers' lawyer's complaint was made.

In another matter, Mr. MacDonald was retained in December 2004 by the beneficiaries of an estate to obtain administration of the estate, with will annexed in the name of one of them. This required preparing the appropriate consents, renunciation of the consenting named executor, nomination forms and request for administration. Mr. MacDonald prepared a set of documents in January 2005 and circulated them amongst the beneficiaries. By July 2005, Mr. MacDonald had gathered fully executed documents from all of the beneficiaries. He did not, however, submit them for filing at that time and did not communicate with the beneficiaries or take any other steps in relation to the estate until the summer of 2009. In August 2009, Mr. MacDonald submitted documents for filing in court, but these were returned to him with a Notice of Rejection requiring eight specific corrections. Mr. MacDonald took no steps to comply with the court's requirements and did not report to the beneficiaries until November 2013, when he sought to have the named executor complete a corrected form of renunciation. When that was promptly returned to him, he again did nothing until May 2014 when he sent a further corrected renunciation form to the named executor. This was, again, promptly returned to him and on July 15, 2014 he re-submitted the request for probate. This was again rejected by the court with a Notice of Rejection setting out three remaining requirements. Mr. MacDonald did not report to the beneficiaries as to this Notice of Rejection. After some of the beneficiaries complained to the Society in September 2015, Mr. MacDonald again re-submitted the request and on October 13, 2015 Letters of Administration with Will Annexed issued.

Plea

Mr. MacDonald entered a guilty plea to all five charges of professional misconduct.

Decision and Comments

The Discipline Committee Panel accepted Mr. MacDonald's guilty plea and accepted the joint recommendation of counsel for the Society and for Mr. MacDonald. The Panel noted that Mr. MacDonald had, in each case, immediately recognized his wrongdoing and accepted responsibility for it; that he had an otherwise clear record after 30 years of practise and that he and his partners had taken positive steps to prevent any such occurrences in the future. Mr. MacDonald had by the time of the hearing, at his own expense, brought himself into compliance with the trust condition to the satisfaction of the lawyer who had imposed it and had obtained Letters of Administration of the estate. They noted, also, that specific clients were directly affected but there was no evidence of financial loss to the clients in either case.

Penalty

The Discipline Committee Panel accepted the joint recommendation of counsel and ordered that Mr. MacDonald be reprimanded and that he pay \$4,500.00 as a contribution to the costs of the investigation and prosecution of the matters.