



DISCIPLINE CASE *DIGEST*

Case 11-08

Member:	Victor Erich Bargaen
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 25, 1992
Particulars of Charges:	Professional Misconduct (3 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> (failing to comply with a trust condition imposed on him by another lawyer) [x 2]▪ Breach of Chapters 1 and 2 of the <i>Code of Professional Conduct</i> (integrity and quality of service) [x1]
Plea:	Guilty
Date of Hearing:	February 14, 2012
Panel:	<ul style="list-style-type: none">▪ Garth Smorang, Q.C. (Chair)▪ Ellen Leibl, Q.C.▪ Neil Cohen (Public Representative)
Disposition:	<ul style="list-style-type: none">▪ Fine of \$5,000.00▪ The member is required to practice under the supervision of a lawyer to be approved by the Law Society of Manitoba for a period of 1 year▪ Costs of \$5,000.00
Counsel:	<ul style="list-style-type: none">▪ C. Kristin Dangerfield for The Law Society of Manitoba▪ Gavin M. Wood for the Member

Breach of Trust Condition / Integrity / Quality of Service

Facts

Mr. Bargaen represented a client on the purchase of a leasehold interest in cottage property. On May 11, 2007 he requested from the vendor's solicitor an Affidavit of Loss of Lease, and undertook to submit the vendor's Assignment and the Affidavit of Loss of Lease to Manitoba Conservation Parks and Natural Areas "forthwith," and to advise when the Assignment had been completed. The vendor's solicitor had previously provided the Assignment, and on May 15, 2007 forwarded to Mr. Bargaen an Affidavit of Loss of Lease. By letter dated January 29, 2008 Mr. Bargaen advised the vendor's solicitor that the Affidavit of Loss of Lease had not been sworn by the vendor's solicitor, and he therefore requested a new Affidavit of Loss of Lease. The vendor's solicitor provided a properly executed Affidavit of Loss of Lease on January 31, 2008 and

requested that Mr. Barga provide confirmation of the completion of registration. On September 3, 2008 Mr. Barga's legal assistant wrote to the solicitor for the vendor requesting the execution of a second Assignment of Lease in the new form which was by then required by Manitoba Conservation, and which was enclosed with the correspondence.

The vendor's solicitor provided the new Assignment of Lease executed by the vendors on September 12, 2008, in trust that his statement of account in the amount of \$395.14 would be paid in full by October 1, 2008 and, in any event, prior to the Assignment being filed with the Crown Lands and Property Agency. Mr. Barga did not file the Assignment of Lease until May 20, 2009, following a complaint received by the Law Society in March 2009. Contrary to the trust condition imposed on him, Mr. Barga failed to pay the lawyer's statement of account until April 20, 2009, and then only after receiving correspondence from the Law Society with respect thereto.

Mr. Barga represented another client, a resident of Toronto, Ontario with respect to her domestic matter. Between September 2003 and February 2005, Mr. Barga failed to conduct himself with integrity and failed to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation. He failed to advance his client's domestic matter or respond to her inquiries on a timely basis. A Petition for Divorce signed by his client on October 20, 2003, was not filed until April 6, 2004. Mr. Barga advised his client on November 20, 2003 that the Petition for Divorce had been filed when in fact it had not been filed. The Petition for Divorce was not accurate in that it purported to include particulars of the client's financial situation on a Financial Statement, which was not in fact attached to the Petition for Divorce.

Mr. Barga purported to witness his client's signature on December 10, 2003 on the Financial Statement which was subsequently attached to the Petition for Divorce. In fact Mr. Barga had met with his client on November 1, 2003 in the City of Toronto at which time she signed a blank signature page for the Financial Statement. Mr. Barga faxed a blank Financial Statement to his client on November 7, 2003 and she returned it to him with handwritten insertions on November 10, 2003. The final form of the Financial Statement was completed by Mr. Barga with the handwritten information provided by his client, and was finalized without his client having had the opportunity to review it in its final form. The Financial Statement contained information with respect to his client's income that was inaccurate and inconsistent with information provided by the client.

Mr. Barga misled his client with respect to the status of her legal proceedings and in particular, with respect to his scheduling of the Case Conference. Mr. Barga advised his client in writing and in a telephone conversation that he had requested the first available Case Conference date and that it would be set in December 2003. However, he took no steps to schedule a Case Conference, and no Case Conference could be scheduled as the Petition for Divorce had not yet been filed. Notwithstanding email communications from his client instructing him to set the Case Conference and take steps to obtain interim spousal support, the Case Conference did not take place until September 14, 2004 after several adjournments of a motion for support in contravention of the client's instructions. Mr. Barga failed to advise his client of an adjournment on August 17, 2004, and failed to respond to email communications from his client on August 18, 23 and 24, 2003.

Plea

Mr. Barga entered a plea of guilty to the charges.

Decision and Comments

Based on his admission to the charges the panel found Mr. Bargaen guilty of professional misconduct.

Penalty

The panel noted with concern Mr. Bargaen's prior history of failing to comply with trust conditions. The panel accepted a joint recommendation made by the Society and counsel for Mr. Bargaen and ordered that:

- (a) Mr. Bargaen be fined \$5,000.00;
- (b) Mr. Bargaen be required to practice under the supervision of a lawyer to be approved by the Law Society of Manitoba for a period of 1 year; and
- (c) Mr. Bargaen pay costs to the Society in the amount of \$5,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.