



# DISCIPLINE CASE *DIGEST*

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## **Case 01-01**

**CHERRETT, LAWRENCE BREMNER**  
Winnipeg, Manitoba

**Called to the Bar**  
June 28, 1979

**Particulars of Charges** Professional Misconduct (4 counts)

- failure to advise his clients in writing to obtain independent legal advice and failure to ensure clients were not acting under the impression he was protecting their interests
- failure to refer clients for independent legal advice when there was, or was likely to be, a conflicting interest between them
- failure to serve clients in a conscientious, diligent and efficient manner
- failure to treat another lawyer with courtesy and good faith by failing to respond to communications with reasonable promptness

**Date of Hearing**  
March 1, 2001

**Panel**  
H. Buchwald, Q.C., (Chair)  
H.S. Leonoff, Q.C.  
K.T. Williams

### **Disposition**

- fine of \$3,500.00;
- costs of \$2,500.00

**Counsel**  
C.K. Dangerfield for The Law Society of Manitoba  
R.H. Kravetsky for the Member

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## Failure to Refer Clients for Independent Legal Advice

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### Facts

Mr. Cherrett represented a corporation and its principals. The principals of the corporation arranged for a meeting with Mr. Cherrett and three shareholders of the corporation (the "purchasers"). The purchasers were seeking to purchase additional shares from other existing shareholders. Each of the three purchasers was deaf and communicated by way of American Sign Language. An ASL Translator attended at the meeting with them and Mr. Cherrett. Mr. Cherrett received a cheque from two of the purchasers and a money order from the third purchaser and his wife for their respective share purchases. A portion of the funds was for Mr. Cherrett's fees for services relating to the share purchase transaction. The funds were deposited in trust by Mr. Cherrett and disbursed on behalf of the purchasers to the law firm representing the vendors of the shares. Mr. Cherrett reported to the purchasers and advised that the shares had been registered according to their instructions. He also forwarded to them a statement of account for his services, which was satisfied out of the monies held by him in trust. Mr. Cherrett failed to urge the purchasers and the third purchaser's wife in writing to obtain independent legal advice with respect to the proposed purchase of the shares. He also subsequently failed to advise one of the purchasers in writing to obtain independent legal advice with respect to the potential sale of his shares in the corporation.

In due course, the principals of the corporation declared bankruptcy and the corporation was dissolved. The purchasers lost their entire investments in the corporation.

In another matter, a client of Mr. Cherrett declared personal bankruptcy. A piece of real property owned by the bankrupt became vested in the Trustee in Bankruptcy. Mr. Cherrett subsequently came to represent the bankrupt's nephew with respect to the purchase from the Trustee of the bankrupt's half interest in the property. The nephew was to take title to the property, subject only to the existing mortgage, which he was to assume. Mr. Cherrett was to complete all documentation, including the discharge of three certificates of judgement, which were registered against the property in the bankrupt's name.

Mr. Cherrett obtained an executed transfer of land from the bankrupt in July, 1994. In April, 1995 he advised the nephew that he was proceeding with the finalization of the registrations. In late 1995 or early 1996, Mr. Cherrett became aware that a substantial dispute and a law suit had arisen with respect to a corporation in which the bankrupt and the nephew were on opposite sides. Mr. Cherrett did not register the transfer of land until May 25, 1998 and did not register the discharges of judgement registered against the bankrupt until April, 1999.

At no time did Mr. Cherrett refer the clients for independent legal advice when there was, or

was likely to be a conflicting interest between them.

In the same matter, the nephew retained counsel to defend his interest in the law suit. Counsel wrote to Mr. Cherrett on a number of occasions requesting advice as to why title had not vested in the name of the nephew and inquiring as to when Mr. Cherrett intended to finalize the registrations. Mr. Cherrett failed to respond to those letters.

### **Decision and Comments**

In respect of the first matter, Mr. Cherrett entered a plea of guilty to failing to advise his clients in writing to obtain independent legal advice, and failing to ensure that his clients were not acting under the impression he was protecting their interests. The Committee was satisfied that in the circumstances of this case, where the complainants' ability to communicate was limited, the prudent course of conduct was for Mr. Cherrett to urge them, in writing, to obtain independent legal advice with respect to their purchase of shares in the corporation and with respect to the potential sale of the shares. By not doing so, he failed in his duty to take appropriate care to see that these unrepresented persons were not proceeding under the impression that he was protecting their interests in connection with the purchase and the sale of the shares.

In respect of the second matter, Mr. Cherrett pled guilty to failing to serve his clients in a conscientious, diligent and efficient manner, failing to respond to correspondence from another lawyer with reasonable promptness and failing to refer his clients for independent legal advice when there was, or was likely to be, a conflicting interest between them.

### **Penalty**

The Discipline Committee noted that most of the misconduct resulted from Mr. Cherrett's inattention. The Committee accepted the joint recommendation of counsel for the member and the Law Society and ordered that Mr. Cherrett be fined \$3,500.00 and ordered to pay costs in the amount of \$2,500.00.

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