



# DISCIPLINE CASE *DIGEST*

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## **Case 01-05**

**JOHN LORING PATRICK SINCLAIR**  
Winnipeg, Manitoba

**Called to the Bar**  
June 7, 1965

**Particulars of Charges**  
Professional Misconduct (3 charges)

- failure to serve client in a conscientious, diligent and efficient manner;
- failure to deposit funds to pooled trust account; and
- failure to comply with a Practice Direction

**Date of Hearing**  
October 30, 2001

**Panel**  
N. A. Cuddy, (Chair)  
G. G. Brodsky, Q.C.  
C. W. Martin

## **Disposition**

- Fine of \$3,000.00
- Costs of \$1,000.00

**Counsel**  
J. R. Gallagher for The Law Society of Manitoba G. M. Wood for the Member

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## **Breach of the Trust Accounting Rules**

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## **Facts**

All three of the charges involved the same client. In November 1996 Mr. Sinclair was retained by the client regarding a possible sale of recreational property which the client had listed for sale. In May 1997 the client accepted an offer to purchase the property with a closing date of May 30, 1997. The transaction closed as scheduled and on or about June 2, 1997 Mr. Sinclair received and deposited to his pooled trust account funds in the amount of \$268,107.60 representing the balance of the sale proceeds. Between about June 3, 1997 and November 17, 1997 pursuant to Orders to Pay signed by the client, Mr. Sinclair disbursed \$232,813.37 of the sale proceeds with the balance being transferred from trust to pay Mr. Sinclair's legal fees, disbursements and GST pertaining to this and other legal matters he was handling for the client. As at May 1, 2000 Mr. Sinclair had not provided the client with a statement of funds received and disbursed or a final reporting letter relating to this transaction.

On or about March 1, 1998 the client provided Mr. Sinclair with a cheque in the sum of \$2,000.00 for legal services performed in another matter. At the time of receiving the payment Mr. Sinclair had not sent or provided the client with a statement of account. The next day, rather than depositing the cheque to his pooled trust account, Mr. Sinclair allowed the cheque to be negotiated through another account. On the same day a statement of account was prepared by his office, however, it was not delivered to the client by Mr. Sinclair until some months later. In failing to deposit the funds to trust before the statement of account was provided to the client Mr. Sinclair acted contrary to Rule 129(1)(a) of the Trust Accounting Rules.

Between about January 24, 1996 and early September, 1998 Mr. Sinclair acted for the client in a number of legal matters. After the client retained new counsel Mr. Sinclair provided a final statement of account that included a charge of 3.5 hours of his time for review of the file and preparation of the itemized statement of account. In charging the client for preparation of the statement of account Mr. Sinclair acted contrary to Practice Direction 94-05 which stipulates that a lawyer is not entitled to charge a client for time spent preparing a statement of account or an itemized account as the client is entitled to receive this information at no additional cost.

## **Decision and Comments**

Mr. Sinclair entered a plea of guilty to the three charges and the Committee found him guilty of professional misconduct. The Committee accepted the joint recommendation submitted by both counsel but noted that they were especially concerned about the breach of the Trust Accounting Rules and that the fine proposed was the minimum acceptable in the circumstances.

## **Penalty**

The Committee ordered that Mr. Sinclair pay a fine of \$3,000.00 apportioned as follows:

- Failure to Serve Client \$500.00
- Breach of Trust Accounting Rules \$2,000.00
- Failing to Comply with Practice Direction \$500.00

The Committee also ordered that Mr. Sinclair pay costs of \$1,000.00 to the Society as a contribution to the costs of the investigation and hearing of the matter.

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