



# DISCIPLINE CASE *DIGEST*

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Case 07-02

<b>Member:</b>	Paul Victor Walsh, Q.C.
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 26, 1968
<b>Particulars of Charges:</b>	Professional Misconduct (3 counts) <ul style="list-style-type: none"><li>▪ Breach of Chapter 16, Commentary 3 of the Code (breach of obligation to treat other lawyers with courtesy and good faith) [x2]</li><li>▪ Breach of Chapter 1 of the Code (failure to act with integrity when dealing with an unrepresented party opposite) and breach of Chapter 16 of the Code (failure to act with courtesy and good faith)</li></ul>
<b>Date of Hearing:</b>	March 20, 2007
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Joel A. Weinstein, Q.C. (Chair)</li><li>▪ John E. Neufeld, Q.C.</li><li>▪ Lori Ferguson Sain</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ 3 month Suspension (concurrent with 6 month suspension that commenced on January 1, 2007)</li><li>▪ Fine of \$10,000.00</li><li>▪ Costs of \$4,500.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ J. Richard Wolson, Q.C. for the Member</li></ul>

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## Breach of Undertaking

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### Facts

Mr. Walsh was retained by his client with respect to a default on a commercial lease. Mr. Walsh's client was the landlord of commercial premises operating as a restaurant. The tenant had defaulted on the lease and had abandoned the premises. When Mr. Walsh pursued the restaurant on behalf of his client, he was advised that the lease had been assigned to another corporation and was referred to their in-house counsel. Mr. Walsh wrote to the restaurant's representative and their counsel regarding the commercial lease matter. Various letters were exchanged between the parties in relation to attempts to sell the commercial property to a third party. While the negotiations on the deal were progressing, Mr. Walsh filed a Statement of Claim on behalf of his client against the tenant and the defendant assignee corporation with respect to the said commercial lease matter.

Shortly thereafter, Mr. Walsh received correspondence from the president of a related company regarding a proposed purchase of the commercial property. In the letter, Mr. Walsh was instructed to contact the company's counsel who was the same in-house counsel that Mr. Walsh had written to previously. That counsel subsequently advised Mr. Walsh that efforts were being made to sell the property to a third party purchaser and thereby settle the commercial lease matter. Mr. Walsh was asked to provide two weeks notice of his intention to proceed with the law suit and the obligation to file a Statement of Defence. Mr. Walsh wrote back and advised that he was not proceeding with the Statement of Claim that had been filed. As requested, he undertook to provide two weeks notice of his intention to proceed with the said claim.

Approximately one month later, the other lawyer wrote to Mr. Walsh to advise that attempts to sell the property had failed. Mr. Walsh filed a second Statement of Claim of behalf of his client against the related company with respect to the same commercial lease matter. He effected service of both claims upon the defendant corporations without providing notice to or advising the other lawyer. Mr. Walsh obtained a Notice of Default in respect of the first claim and attempted to obtain default judgment with respect to the second claim without first advising or warning the other lawyer of his intentions and without making an enquiry regarding the filing of a Statement of Defence.

Subsequently, Mr. Walsh received a telephone call from a director of a defendant corporation, which defendant, at that time, was an unrepresented party opposite. During the said telephone conversation with the director, Mr. Walsh discussed whether or not the defendant corporation was the appropriate defendant in the first claim. He did not advise the director that default had been noted already against the defendant corporation in respect of the first claim. Mr. Walsh then wrote to the director and advised, inter alia, that a Statement of Claim had been filed and served upon the defendant corporation. However, in his letter, Mr. Walsh did not advise the director that default had been noted already against the defendant corporation in respect of the first claim for failing to file a Statement of Defence.

The director responded to Mr. Walsh by letter and requested that the defendant corporation be released from the action. Following his receipt of the said letter, Mr. Walsh did not inform the director that default had been noted already against the defendant corporation.

### **Plea**

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

### **Decision and Comments**

The panel found Mr. Walsh guilty of professional misconduct based on his admissions to the charges.

### **Penalty**

Noting that the conduct predated the conduct for which Mr. Walsh recently began serving a period of suspension, the panel accepted a joint recommendation made by the Society and counsel for Mr. Walsh and ordered that:

- (a) Mr. Walsh be suspended for a period of 3 months, which suspension will be served concurrently with a 6 month suspension that commenced on January 1, 2007;
- (b) Mr. Walsh pay a fine in the amount of \$10,000.00; and
- (c) Mr. Walsh pay costs to the Society in the amount of \$4,500.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.