



# DISCIPLINE CASE *DIGEST*

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Case 07-04

<b>Member:</b>	Richard Allen Paul Holmes
<b>Jurisdiction:</b>	Swan River, Manitoba
<b>Called to the Bar:</b>	June 26, 1980
<b>Particulars of Charges:</b>	Professional Misconduct (4 counts) <ul style="list-style-type: none"><li>▪ Breach of Rule 5-63(3) and (4) [failing to provide written response to the Law Society] (x3)</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (failing to act with integrity by signing a trust cheque when it was known that he did not have signing authority)</li></ul>
<b>Date of Hearing:</b>	June 7, 2007
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Gordon J. Hoeschen (Chair)</li><li>▪ Christopher W. Martin</li><li>▪ Bruce M. Sychuk</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Costs of \$1,500.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Joan Holmstrom for The Law Society of Manitoba</li><li>▪ Member Unrepresented</li></ul>

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## Failure to Respond / Failure to Act with Integrity

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### Facts

Mr. Holmes acted on the sale of property. The purchaser submitted a complaint to the Society regarding Mr. Holmes' conduct. The Society wrote to Mr. Holmes on two occasions, seeking his written response to the concerns raised by the purchaser, and in each case, he failed to respond to the Society within the time prescribed.

Mr. Holmes also failed to respond to the Society within the time prescribed to letters sent by the Society on a second investigation resulting from a complaint made by a lender.

In a third matter, Mr. Holmes acted for purchasers of real property. In closing the transaction, Mr. Holmes provided to the Vendor's solicitor a firm trust cheque for the balance of funds due on closing. Mr. Holmes knew at the time he signed the cheque that he did not have signing authority on the firm trust account upon which the cheque was drawn. When the vendor's solicitor presented the cheque to the bank, he was advised that the cheque could not be negotiated as it

had not been signed by an authorized signatory. Mr. Holmes attended at the bank and obtained signing authority over the trust account the next day.

### **Plea**

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

### **Decision and Comments**

The panel noted the failure to respond to letters sent by the Society is taken seriously as the Society's ability to properly supervise the conduct of its members could be compromised if members do not respond. The panel also found that Mr. Holmes' conduct with respect to the cheque was a serious matter dealing with integrity. The panel found Mr. Holmes guilty of professional misconduct based on his admission to the charges.

### **Penalty**

The panel noted that these were the first charges faced by Mr. Holmes after 25 years of practice when it accepted a joint recommendation made by the Society and Mr. Holmes and ordered that:

- (a) Mr. Holmes be reprimanded for his conduct; and
- (b) Mr. Holmes pay \$1,500.00 to the Society as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.