



# DISCIPLINE CASE *DIGEST*

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Case 07-08

<b>Member:</b>	Lawrence Bremner Cherrett
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 28, 1979
<b>Particulars of Charges:</b>	Professional Misconduct (4 counts) <ul style="list-style-type: none"><li>▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> (failure to serve client in a conscientious, diligent and efficient manner) [x2]</li><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (breach of duty of integrity by misleading client)</li><li>▪ Breach of Rule 5-54(b) and Rule (a) of Chapter 11 of the <i>Code of Professional Conduct</i> (charged and accepted a disbursement that was not fully disclosed, fair and reasonable)</li></ul>
<b>Date of Hearing:</b>	July 17, 2007
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Eric B. Irwin (Chair)</li><li>▪ G. Gregory Brodsky, Q.C.</li><li>▪ Jack D. Cram</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Ordered to practice under supervision for a period of six months</li><li>▪ Fine in the amount of \$5,000.00</li><li>▪ Costs of \$4,000.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Stephen F. Vincent for the Member</li></ul>

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## Failing to Serve Clients

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### Facts

Mr. Cherrett was retained to act in respect of a real estate transaction that was to close on July 5, 2004 in Ontario. He was retained to represent the interests of the vendors, the purchaser and the mortgagee. He received the mortgage proceeds on July 5, 2004. On July 14, 2004, Mr. Cherrett transferred the majority of the mortgage proceeds to the credit of the vendors and also made a partial payment to the vendors out of the said mortgage proceeds. At that time, he had failed to confirm that all of the closing documents were in registerable form and had been submitted for registration to the appropriate land titles office, contrary to the mortgage instructions that he had received. As well, he had failed to arrange for title to the property to be transferred into the name of the purchaser and had failed to ensure that all of the closing documents had been submitted

for registration such that he could then promptly and properly pay out and discharge the vendors' mortgage on the property.

Pursuant to a Statement of Account dated August 3, 2004, sent to the purchaser, Mr. Cherrett charged a sum for a disbursement in respect of the registration of documents in Ontario, although the documents had not yet been registered. As of November 23, 2005, Mr. Cherrett had failed to cause a mortgage to register in the appropriate land titles office to secure the mortgage proceeds that had been advanced by the mortgagee more than one year earlier. As well, he had not yet arranged for transfer of the title to the purchaser.

Mr. Cherrett had retained an agent to assist him with the real estate transaction. By letter dated November 26, 2004, the agent advised Mr. Cherrett that the transaction had not been concluded and sought further instructions. In February 2005, Mr. Cherrett received a letter from one of the Society's auditors wherein he was asked questions about the real estate transaction and whether a cheque (for the registration of the documents in Ontario) had cleared. On April 4, 2005, Mr. Cherrett responded by advising that the matter had not been completed and that the cheque in question had not cleared. By letter dated April 15, 2005, the agent wrote to Mr. Cherrett and asked if he was to hold the file in abeyance or if he should render his Statement of Account at that time. In or about June 2005, the purchaser contacted Mr. Cherrett and advised that it was his intention to sell the property but that he had discovered that he was not on title. By letter dated June 3, 2005, Mr. Cherrett advised the purchaser that an agent's communication from the fall of 2004 went astray and that he had understood the matter had been finalized.

### **Plea**

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

### **Decision and Comments**

In commenting that the member acted for the vendors, the purchaser and the financing company in respect of the transaction, the Panel noted that Mr. Cherrett somehow got lost in the process and failed to complete the matter. With respect to the charge that Mr. Cherrett had misled his client, the Panel found that at the time he wrote the letter to his client in June 2005, he knew or was wilfully blind to the fact that the matter had not been finalized. The Panel noted that Mr. Cherrett compounded his difficulties by believing somehow that the matter would just go away if he ignored it and abrogated his responsibilities to the parties in question. The Panel found that the acts had been proven to its satisfaction and therefore found Mr. Cherrett guilty of professional misconduct.

### **Penalty**

The Panel noted both Mr. Cherrett's prior convictions and his community service and articulated its hope that the disposition would both act as a deterrent and adequately protect the interest of the public. The Panel accepted the joint submission of counsel for the Law Society and counsel for Mr. Cherrett and ordered that:

- (a) Mr. Cherrett be required to practice under the supervision of a member approved by the Society for a period of six months;
- (b) Mr. Cherrett pay a fine to the Society in the amount of \$5,000.00; and
- (c) Mr. Cherrett pay to the Society the amount of \$4,000.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.