



DISCIPLINE CASE *DIGEST*

Case 08-04

Member:	Member B
Jurisdiction:	Winnipeg, Manitoba
Particulars of Charges:	Professional Misconduct <ul style="list-style-type: none">▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> (failing to respond to opposing counsel with reasonable promptness or at all)
Date of Hearing:	October 24 and November 13, 2007
Panel:	<ul style="list-style-type: none">▪ John D. Cram, Q.C. (Chair)▪ Gary R. Gilmour▪ Celia E. Gorlick, Q.C.
Disposition:	Acquitted
Counsel:	<ul style="list-style-type: none">▪ Joan Holmstrom for The Law Society of Manitoba▪ Sidney Green, Q.C. for the Member

Failure to Respond to Opposing Counsel

Facts

Lawyer B secured payment for unpaid legal fees by having a client grant a charge on the client's land. In July 1997, Lawyer B registered a caveat with respect to this charge on the title of the property. In 2003, Lawyer B sued the client in Small Claims Court and obtained judgement for the amount of the unpaid account. The client subsequently declared bankruptcy in 2004 and Lawyer B filed a Proof of Claim as a secured creditor for the unpaid fees based upon the charge and caveat. In August 2005, the Trustee in Bankruptcy retained counsel to deal with some of the bankruptcy issues. Counsel for the Trustee wrote to Lawyer B on August 9, 2005 advising that Lawyer B did not have a secured claim as the joint tenant to the property had not also executed a charge. He requested that Lawyer B provide a discharge of the caveat, failing which legal proceedings would be taken. Lawyer B did not respond to this letter. The Trustee's counsel wrote two follow-up letters on September 14, 2005 and January 20, 2006 asking for a response to the letter of August 9, 2005. Lawyer B did not respond to these two further letters.

In March, 2006, the Trustee served Lawyer B with a Notice of Disallowance of Claim. Lawyer B filed a Notice of Motion appealing the Trustee's decision with the Court of Queen's Bench which was ultimately set for hearing on July 4, 2006. On June 20, 2006, Counsel for the Trustee wrote to Lawyer B asking for his materials in support of the Motion. Lawyer B did not provide any materials for the Motion until the morning of the hearing. The motion was dismissed with costs in

favour of the Trustee. The Trustee's counsel sent a draft Order to Lawyer B on July 11, 2006, and receiving no response, sent a follow-up letter on July 27, 2006. On August 1, 2006 he received a response which was dated July 18, 2006, but which had apparently not been sent while Lawyer B was on holidays.

Lawyer B brought a motion for leave to appeal the decision dismissing the motion, and concurrently, counsel for the Trustee brought a motion to direct the Registrar of the Land Titles Office to vacate the Caveat from the title. Both motions were heard on September 5, 2006. Lawyer B was unsuccessful on both motions and further costs were awarded against Lawyer B. The Trustee's counsel sent a draft Order to Lawyer B for signature on September 7, 2006 and received no response. The Trustee's counsel sent follow-up letters to Lawyer B on September 19 and October 16, 2006. On October 24, 2006, the Trustee's counsel received a letter from Lawyer B dated October 13, 2006.

Plea

Lawyer B entered a plea of not guilty to the Citation.

Decision and Comments

At the hearing, Lawyer B took the position that as the matter involved the pursuit of a personal matter, an unpaid legal account, rather than a matter on behalf of a client, a charge of professional misconduct could not be sustained. The Panel considered the evidence and arguments on this point and found that Lawyer B was acting in his professional capacity in representing his own interests and collecting a legal account. Accordingly, a charge of professional misconduct was not inappropriate for the circumstances.

The Panel found that Lawyer B had failed to respond to several communications within a reasonable period of time but that, in the circumstances of the case where seventeen months had passed between the filing of the Proof of Claim in the Bankruptcy and the initial response from counsel for the Trustee, and where there had been no urgency associated with the bankruptcy proceedings which had yet to conclude, the Panel was not prepared to make a finding of professional misconduct.