



# DISCIPLINE CASE *DIGEST*

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Case 08-07

<b>Member:</b>	<b>Richard James Henderson</b>
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 29, 1978
<b>Particulars of Charges:</b>	Professional Misconduct (8 counts) <ul style="list-style-type: none"><li>▪ Breach of Chapter 16 of the <i>Code of Professional Conduct</i> ("the Code") [failing to comply with trust condition] (x2)</li><li>▪ Breach of Rule 5-43(1)(c) [withdrew funds from pooled trust account to pay for fees or disbursements, without preparing and sending statements of account to clients]</li><li>▪ Breach of Chapter 11 of the Code [charging fees that were not fully disclosed, fair and reasonable]</li><li>▪ Breach of Chapter 1 of the Code [failing to act with integrity] (x3)</li><li>▪ Breach of Rule 5-52 [appropriating funds from pooled trust account on account of fees without the express or implied authority of client]</li></ul>
<b>Date of Hearing:</b>	August 25, 2008
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ John E. Neufeld, Q.C., Chair</li><li>▪ Norman A. Cuddy</li><li>▪ Paul L. Jensen</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Member permitted to resign from the practice of law pursuant to Section 72(1)(g) of the <i>Legal Profession Act</i>;</li><li>▪ Costs of \$15,000.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ C. Kristin Dangerfield for The Law Society of Manitoba</li><li>▪ Evan J. Roitenberg for the Member</li></ul>

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## Breach of Trust Accounting Rules

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### Facts

In respect of two separate client matters, Mr. Henderson was provided with cash to mortgage upon the trust condition that he hold back in one instance \$2,000.00, and in the other instance \$2,500.00 pending completion of outstanding work. In both instances, Mr. Henderson paid out the money prior to the work being completed.

In respect of 63 client matters, Mr. Henderson withdrew money from his pooled trust account to pay for the recovery of fees or disbursements without statements of account being prepared and sent to the clients at the time the funds were withdrawn, contrary to Rule 5-43(1)(c) of the *Rules of The Law Society of Manitoba*.

Mr. Henderson was retained by a client to seek Letters of Administration in respect of the estate of his client's father. He received the assets of the estate from the Office of the Public Trustee in March 2004. Two of the three beneficiaries of the estate approved the fees and disbursements that were paid to Mr. Henderson at that time. Mr. Henderson paid those same beneficiaries their respective shares of the estate, and was instructed to hold back the third beneficiary's share and to distribute it annually in equal instalments. He did so in each of 2004 and 2005, however, between March 29, 2004 and April 2, 2006, Mr. Henderson withdrew from his pooled trust account the sum of \$4,336.00, purportedly on account of fees, without obtaining either the consent of the beneficiaries to an agreed fee or court approval as required by Queen's Bench Rule 74.14(4). In making the withdrawals that he did, Mr. Henderson took fees that were not fully disclosed, fair and reasonable, contrary to Chapter 11 of the *Code of Professional Conduct*.

In respect of the same matter, Mr. Henderson appeared before the Complaints Investigation Committee. Mr. Henderson misled the Committee when he advised that he had been authorized by his client and the beneficiaries of the estate to charge fees in excess of that provided by the *Queen's Bench Rules*, when in fact he had not been so authorized.

In another matter, Mr. Henderson was retained by a client with respect to the sale of her home and litigation relating thereto. He held the net proceeds from the sale in the amount of \$34,866.39 in trust. Subsequently, the purchaser of the home obtained an Attaching Order requiring Mr. Henderson to remit to the Sheriff's Office the sum of \$29,640.00 from the monies held in trust. Mr. Henderson did not remit the funds pursuant to the Attaching Order. In February 2005, Mr. Henderson was directed by the Court of Queen's Bench to file an Amended Attaching Order allowing him to hold the sum of \$29,640.00 in his trust account. Mr. Henderson failed to file the Amended Attaching Order, and withdrew from his trust account the sum of \$29,575.00, purportedly on account of fees and disbursements. Mr. Henderson failed to conduct himself with integrity by breaching the Attaching Orders.

In respect of the same matter, Mr. Henderson misled the Complaints Investigation Committee when he advised that the Attaching Order and the subsequent direction from the Court of Queen's Bench were superseded by an understanding amongst counsel that Mr. Henderson was to hold only the sum of \$5,000.00 in his trust account, when in fact there was no such understanding.

In respect of the same matter, between August 2004 and May 2006, Mr. Henderson withdrew the total sum of \$29,575.00 on account of fees, without the express or implied authority of his client, contrary to Rule 5-52 of the Rules of The Law Society of Manitoba.

### **Plea**

Mr. Henderson entered a plea of guilty to each of the charges.

### **Decision and Comments**

The Panel found Mr. Henderson guilty of professional misconduct based on his admission to the charges. The Panel considered medical evidence as to conditions which impacted upon the manner in which Mr. Henderson had conducted his practice.

## **Penalty**

The Panel accepted a joint recommendation made by counsel for the Law Society and for Mr. Henderson and ordered that:

- (a) Mr. Henderson be permitted to resign from the practice of law, pursuant to Section 72(1)(g) of the *Legal Profession Act*; and
- (b) Mr. Henderson pay costs to the Society in the amount of \$15,000.00 as a contribution towards the costs of the investigation, prosecution and hearing of the matter.