



# DISCIPLINE CASE *DIGEST*

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Case 08-09

<b>Member:</b>	John Loring Patrick Sinclair
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 7, 1965
<b>Particulars of Charges:</b>	Professional Misconduct (2 counts): <ul style="list-style-type: none"><li>▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> [failing to serve client in a conscientious, diligent and efficient manner]</li><li>▪ Breach of Rule 5-52 [appropriating funds from pooled trust account to pay for the recovery of fees or disbursements without the express or implied authority of the client]</li></ul>
<b>Date of Hearing:</b>	December 11, 2008
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Victor P. Bellay, Chair</li><li>▪ Peter J. Cole, Q.C.</li><li>▪ Jane Ursel</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Reprimand</li><li>▪ Costs of \$3,500.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ C. Kristin Dangerfield for The Law Society of Manitoba</li><li>▪ Member Unrepresented</li></ul>

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## Failing to Serve Clients

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### Facts

Mr. Sinclair was retained by a client in August 2002 with respect to a claim for wrongful dismissal against her former employer. On August 14, 2002, Mr. Sinclair sent a letter to his client's employer rejecting an offer for settlement and making a counter proposal. Between August 2002 and November 23, 2004, the client received only two letters from Mr. Sinclair. She placed periodic phone calls to Mr. Sinclair enquiring as to the status of her matter, some of which were not returned. In late 2002, she was advised that Mr. Sinclair would prepare and review a Statement of Claim.

On February 18, 2003, the client was contacted by Mr. Sinclair's office with a request that she provide \$120.00 for "papers that had to be filed". She provided a cheque for \$120.00, which was

deposited to Mr. Sinclair's pooled trust account. The Statement of Claim was not, however, filed until August 9, 2004. The client was not advised of the filing.

On November 22, 2004, the employer made an Offer to Settle consistent with its original offer. Mr. Sinclair forwarded the Offer to Settle to his client on November 23, 2004. On January 12, 2005, the client instructed Mr. Sinclair to reject the offer and proceed to examination for discovery. Mr. Sinclair prepared a draft Affidavit of Documents in June 2005, but did not provide it to the defendant's solicitor. He wrote to the defendant's solicitor requesting the defendant's Affidavit of Documents on November 14, 2005.

In early January 2006, the client instructed Mr. Sinclair's office to settle her case in accordance with the Defendant's Offer to Settle. Throughout January, February and March 2006, the client left telephone messages for Mr. Sinclair inquiring into the status of the matter. Mr. Sinclair responded to the calls belatedly, and when he did so, he indicated there was no news. It was not until March 24, 2006 that Mr. Sinclair advised the employer's solicitor that he had been instructed to accept the Offer to Settle made on November 22, 2004.

On May 5, 2003, Mr. Sinclair rendered a Statement of Account for fees in the total amount of \$120.00, inclusive of GST. He withdrew the sum of \$120.00 from his pooled trust account on or about May 5, 2003 to pay for the recovery of his fees. The transfer of the funds was made without the express or implied authority of the client. In fact, no disbursement for filing documents had been incurred as of May 3, 2003.

### **Plea**

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

### **Decision and Comments**

The Panel found Mr. Sinclair guilty of professional misconduct, based on his admission to the charges.

### **Penalty**

The Panel accepted a joint recommendation made by the Society and Mr. Sinclair and ordered that:

- (a) Mr. Sinclair be reprimanded; and
- (b) Mr. Sinclair pay costs to the Law Society in the amount of \$3,500.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.

The Panel expressed concern about Mr. Sinclair's lengthy discipline history which included 5 convictions and a formal caution, a number of which resulted from charges of failing to serve clients in a conscientious, diligent and efficient manner. The Panel noted that reprimands should not normally be permitted in circumstances where a member has a discipline record. However, the Panel recognized that this was a unique circumstance, in that in April 2006, a discipline panel had convicted Mr. Sinclair of professional misconduct and ordered an 18 month period of supervision for similar conduct occurring within the same time frame as this client matter. The Panel noted Mr. Sinclair's significant community involvement, but reminded him that his primary focus and attention ought to be on his practice and providing service to his clients.