



# DISCIPLINE CASE *DIGEST*

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Case 09-03

<b>Member:</b>	David H. Davis
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 29, 1989
<b>Particulars of Charges:</b>	Professional Misconduct (4 counts): <ul style="list-style-type: none"><li>▪ Breach of c. 1 and 11 of the <i>Code</i> [failure to act with integrity by charging fees that were not fully disclosed, fair and reasonable]</li><li>▪ Breach of c. 11 of the <i>Code</i> [paying a referral fee to a non-lawyer]</li><li>▪ Breach of c. 6, Rule (c), of the <i>Code</i> [conflict of interest] (x2)</li></ul>
<b>Date of Hearing:</b>	March 4, 2009
<b>Date of Sentencing Decision:</b>	March 13, 2009
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ James W. Hedley, Chair</li><li>▪ Garth H. Smorang, Q.C.</li><li>▪ Vivian E. Rachlis</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ David M. Skwark for The Law Society of Manitoba</li><li>▪ David G. Hill for the Member</li></ul>
<b>Plea:</b>	Guilty
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Suspended (6 mos., commencing June 1, 2009)</li><li>▪ Costs of \$25,000.00</li></ul>

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## Conflict of Interest/Breach of Integrity

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### Facts

In December 2003 Mr. Davis was retained by FT and his niece LA with respect to LA's application to immigrate to Canada under the live-in caregiver program. Mr. Davis provided advice to LA with respect to her application, and concurrently offered her a job as a nanny for his children, which offer LA accepted.

Mr. Davis instructed his legal assistant to place an advertisement for a full-time live-in caregiver for his children in the Winnipeg Free Press. He wrote to FT in January 2004 enclosing a Statement of Account for services rendered concerning LA's live-in caregiver application, which included a disbursement for the personal advertisements published on Mr. Davis' behalf. Mr.

Davis admitted that he failed in his duty to conduct himself with integrity by charging FT disbursements that were not fully disclosed, fair and reasonable, contrary to Chapters 1 and 11 of the *Code of Professional Conduct*.

In May 2005 Mr. Davis rendered a Statement of Account to FT for services rendered to LA which included disbursements of \$250.00 and \$200.00 respectively for translation services. In fact, Mr. Davis had not incurred any disbursements for translation services but had instead paid \$450.00 to RV, a non-lawyer, as a referral fee for referring FT or LA or both to him. Mr. Davis admitted that he paid a referral fee to a non-lawyer, contrary to Chapter 11 of the *Code of Professional Conduct*.

LA's working visa provided that she was only entitled to work for Mr. Davis and cautioned that other work could result in the work permit being rescinded. Between April 26, 2005 and December 30, 2006, Mr. Davis' wife made arrangements for LA to work for other individuals for whom she was not authorized to work, all with Mr. Davis' knowledge and consent. During the term of LA's employment with Mr. Davis, her monthly wages were reduced at Mr. Davis' direction, she was not paid for over 200 hours of overtime work and she was charged more for room and board than was permitted by the live-in caregiver program guidelines. At all material times, Mr. Davis was both counsel for, and employer of LA. Mr. Davis admitted that he had acted for LA while his interests and those of an associate, namely his wife, were in conflict with those of LA, contrary to Chapter 6, Rule (c) of the *Code of Professional Conduct*.

In November 2006 Mr. Davis was retained by AP with respect to her application for a live-in caregiver work permit. AP had entered Canada in February 2006 on a visitor's visa to care for her ill sister who had subsequently died in September 2006. AP's visitor's visa was valid until January 7, 2007, and prohibited her from engaging in any employment while in Canada. In November 2006 Mr. Davis suggested to AP that she contact another client RS, with respect to caring for RS's elderly mother. On November 29, 2006, AP entered into an employment agreement with RS. To Mr. Davis' knowledge, she did not have a work permit at that time.

After LA terminated her employment with Mr. Davis in December 2006, Mr. Davis approached AP and offered her employment as a live-in caregiver for his family. AP commenced employment with Mr. Davis on January 7, 2007. Between November 2006 and April 2007 Mr. Davis was both AP's employer and her lawyer concerning immigration related applications. During the time that AP worked for Davis, he failed to advise her that she did not have a work permit that entitled her to do so. Mr. Davis admitted that while acting for AP, his interests, or those of an associate, namely his wife, were in conflict with those of AP, contrary to Chapter 6, Rule (c) of the *Code of Professional Conduct*.

## **Plea**

Mr. Davis pled guilty to the charges of professional misconduct outlined above.

## **Decision and Comments**

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

## **Penalty**

The panel noted that disbarment was within the range of possible dispositions available given the facts before them, Mr. Davis' previous disciplinary record and the traditional sentencing principles in a disciplinary matter. The Panel expressed concern about whether Mr. Davis had sufficient insight to ensure that such incidents would not be repeated, however ultimately took into account mitigating circumstances and Mr. Davis' subsequent conduct. The Panel concluded that in the absence of clear and cogent reasons for departing from the joint recommendation made by

counsel for the Law Society and for Mr. Davis, there was no good cause to reject the joint recommendation. The panel therefore ordered that:

- (a) Mr. Davis be suspended for a period of 6 months, commencing June 1, 2009; and
- (b) Mr. Davis pay \$25,000.00 to the Society as a contribution towards the cost of the investigation, prosecution and hearing of the matter.