



# DISCIPLINE CASE *DIGEST*

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Case 09-05

<b>Member:</b>	Robert Lewis Fisher
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 23, 1983
<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 Chapter 3 of the <i>Code of Professional Conduct</i> [failing to be honest and candid with client]</li></ul>
<b>Date of Hearing:</b>	October 20, 2008
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Robert A. Dewar, Q.C., Chair</li><li>▪ Victor P. Bellay</li><li>▪ Donald G. Douglas</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$2,000.00</li><li>▪ Costs of \$4,600.00</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Joe R. Gallagher for The Law Society of Manitoba</li><li>▪ Member Unrepresented</li></ul>

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## Failure to Serve Client / Failure to Be Honest and Candid with Client

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### Facts

Mr. Fisher was retained in October, 2003 to defend a claim brought against his client by the builder on a contract for the purchase of a lot and construction of a residence for the client. At the examinations for discovery in 2005, Mr. Fisher entered into a settlement agreement on behalf of his client but did not confirm the terms of the settlement in writing to the client. Shortly thereafter, it became apparent that his client had not understood the terms of the agreement. Instead of withdrawing as counsel and referring his client to new counsel, Mr. Fisher continued to act, and he failed to be responsive to opposing counsel who was trying to enforce the settlement agreement, or to his client who was trying to determine the status of the matter.

As a result, and without the client's knowledge, Summary Judgment was entered against him and a Writ of Seizure and Sale of the client's property was issued to the Sheriff's Office to execute the Judgment. Sherriff's officers attended at the client's residence in August 2006 to execute the writ.

Mr. Fisher was contacted and misled his client as to the status of the matter. He advised the client that there had been an error by someone in Mr. Fisher's office, and that the client would have to immediately pay \$15,134.00 into court to correct the error. The client provided a certified cheque which was sufficient to satisfy the judgment, interest and the costs of the writ. Thereafter, Mr. Fisher failed to respond to communications from opposing counsel, and failed to advise the client of a motion to amend the Judgment, or of the fact that the motion was granted and the Judgment amended to permit the release of funds held to complete repairs of deficiencies.

Mr. Fisher was charged with failing to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service equal to that expected of a competent lawyer, and also failing to be honest and candid with his client.

### **Decision and Comments**

The Committee accepted Mr. Fisher's admission to both counts and found him guilty of professional misconduct.

### **Penalty**

The Committee accepted the joint recommendation made by the parties and ordered that Mr. Fisher:

- (a) pay a fine in the amount of \$2,000.00 to the Society; and
- (b) pay \$4,600.00 to the Society as a contribution towards the costs of the investigation, prosecution and hearing of the matter.

The Committee ordered that the fine and costs be paid by way of consecutive monthly payments until paid in full, with the amount and schedule of the monthly payments to be agreed from time to time, but not less than annually, between the Society and Mr. Fisher.