



DISCIPLINE CASE *DIGEST*

Case 09-14

Member:	Richard Allen Paul Holmes
Jurisdiction:	Swan River, Manitoba
Called to the Bar:	June 26, 1980
Particulars of Charges:	<p>Professional Misconduct (15 counts)</p> <ul style="list-style-type: none">▪ Breach of Chapter 2 of the <i>Code of Professional Conduct</i> (hereinafter referred to as “the Code”) [failure to serve clients in a conscientious, diligent and efficient manner] – x5▪ Breach of Chapter 5 of the Code [acting for clients when there is or is likely to be a conflicting interest]▪ Breach of Chapters 1, 9, 13, 15, 19 of the Code [sending a communication that is offensive]▪ Breach of Chapters 4 & 8 of the Code [failing to maintain and protect the confidentiality of clients]▪ Breach of Chapter 8 of the Code [failing in duty with respect to the preservation and safekeeping of client property] – x2▪ Breach of Chapter 11 of the Code [charging a fee in excess of Queen’s Bench Rule 74.14 without consent]▪ Breach of Section 55(3) of the <i>Legal Profession Act</i> [entering into a contingency fee agreement and failing to provide the relevant provisions of the <i>Act</i> to the client as required]▪ Breach of Rules 5-64(3) and 5-64(4) [failing to respond to communications from the Law Society] – x3
Date of Hearing:	January 7, 2010
Panel:	<ul style="list-style-type: none">▪ Donald G. Douglas (Chair)▪ Jennifer A. Cooper, Q.C.▪ Linda Brazier-Lamoureux
Counsel:	<ul style="list-style-type: none">▪ C. Kristin Dangerfield for The Law Society of Manitoba▪ Member Unrepresented
Disposition:	<ul style="list-style-type: none">▪ 3 year suspension▪ In the event Mr. Holmes applies to resume practice following his period of suspension, he will be required to:<ul style="list-style-type: none">(a) Practice under supervision; and(b) Take, at his own expense, and successfully complete, remedial education programs provided by the Society in <i>Ethics and Responsibility</i> and in those areas of practice in which he intends to practice.▪ Costs of \$8,750.00

Failure to Serve / Breach of Duties Owed to Clients

Facts

Mr. Holmes was retained to act with respect to a domestic matter and in the course of that representation, he failed to advise his client to comply with an Order of the Court of Queen's Bench to provide financial disclosure to his former spouse and failed to advise as to the consequences of non-compliance. His client failed to comply with the Order and was found in contempt of the Order.

With respect to the same client, Mr. Holmes failed to advise his client to comply with an Order of the Court of Queen's Bench that he preserve the former marital home and failed to advise as to the consequences of non-compliance. Mr. Holmes also facilitated his client in his attempt to sell the marital home and the client was found in contempt of the Preservation Order.

In both instances, Mr. Holmes failed to serve his client in a conscientious, diligent and efficient manner.

While acting for the same client and in violation of the Preservation Order, Mr. Holmes' client accepted an offer from a third party to purchase the marital home. Mr. Holmes acted for both the purchaser and the vendor in respect of the transaction, filed a caveat against title to the marital home in favour of the purchaser and did not inform either the purchaser or vendor of the conflict of interest. In doing so, Mr. Holmes failed in his duty to not act when there was, or was likely to be, a conflicting interest.

In the same matter, Mr. Holmes sent an e-mail to the client which was offensive and otherwise inconsistent with the proper tone of a professional communication in that he inappropriately criticized opposing counsel. Also in that matter, Mr. Holmes forwarded his client file to new counsel and, when doing so, included documents and materials relating to 11 other clients or former clients. He thereby failed to maintain and protect the confidentiality of those clients, contrary to Chapter 8 of the *Code of Professional Conduct*.

Mr. Holmes was retained by a client in respect of the administration of an estate and either lost or destroyed a portion of the client's file. He therefore failed to discharge the duty owed to his client with respect to the safekeeping and preservation of client property. When acting for that client, he failed to provide his client with a statement of monies received and disbursed, failed to provide an interim or final report and failed to obtain or inquire as to whether or not a tax clearance certificate had been obtained by Canada Revenue Agency. Mr. Holmes also failed to comply with the requirement of Queen's Bench Rule 74.14(4) to provide a true copy of Form 74AA to the residual beneficiaries. Mr. Holmes therefore failed to serve his clients in a conscientious, diligent and efficient manner. In the same matter, he charged a fee that was not fully disclosed, fair and reasonable in that he charged fees in excess of the tariff permitted by Queen's Bench Rule 74.14, without first obtaining the informed consent of the residual beneficiaries.

Mr. Holmes was retained by the same client to collect a debt. Mr. Holmes and the client entered into a contingency fee agreement and Mr. Holmes failed to attach the relevant provisions of the *Legal Profession Act*, contrary to Section 55(3) of the Act. Further in that matter, Mr. Holmes failed to serve his client in a conscientious, diligent and efficient manner when he took no steps to collect the debt as he was instructed to do, and failed to respond to repeated telephone inquiries from his client with respect to the status of the collection proceedings.

While acting for the same client on the sale of real property, Mr. Holmes lost the client's file, including an original promissory note, thereby failing to comply with his obligation to preserve client property.

Mr. Holmes failed to respond to the substance of a letter sent to him by the Director of Discipline on January 22, 2009. He also failed to respond to letters from the Director of Discipline sent to him on July 6 and 28, 2009. He was therefore in breach of Law Society Rules 5-64(3) and (4).

Plea

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

Decision and Comments

The Panel found that the alleged acts had been proven to its satisfaction and found Mr. Holmes guilty of professional misconduct.

Penalty

The Panel accepted the joint submission of counsel for the Law Society and Mr. Holmes and ordered that Mr. Holmes be suspended from the practice of law for a period of 3 years, retroactive to the date of his withdrawal from practice on June 17, 2009. In the event that Mr. Holmes applies to resume practice after serving the suspension, the panel ordered that he be required to:

1. Practice under the supervision of a member of the Law Society of Manitoba who has been approved by the Law Society; and
2. Take, at his own expense, and successfully complete, remedial education programs provided by the Law Society of Manitoba in *Ethics and Responsibility* and in those areas in which he intends to practice.

The panel also ordered that Mr. Holmes pay to the Law Society the amount of \$8,750.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.