



# DISCIPLINE CASE *DIGEST*

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Case 09-15

<b>Member:</b>	<b>Member A</b>
<b>Called to the Bar:</b>	June 23, 1983
<b>Nature of Hearing:</b>	Pardon Application
<b>Date of Hearing:</b>	March 4, 2010
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Heather S. Leonoff, Q.C.</li><li>▪ Vivian E. Rachlis</li><li>▪ William S. Gange</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>
<b>Disposition:</b>	Pardon Granted

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## Pardon Application

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### Facts

Member A was convicted in 1994 of professional misconduct for having breached a court order and a trust condition. A fine of \$1,000.00 and costs of \$650.00 were ordered. The member had brought an application on behalf of his client to set aside default judgment in the Court of Queen's Bench. Judgment was set aside on terms, one of which required him to retain \$18,000.00 from the net sale proceeds of his client's property in his trust account, pending disposition of the action, agreement of the parties or further order of the court. Judgments had been registered against the property prior to the application, and discharges of those judgments were sent to Member A in trust on the condition that \$18,000.00 from the sale proceeds of the property would be held in his trust account until otherwise ordered by the court or with the consent of counsel. In an attempt to reduce interest payable by his client and contrary to both the order of the court and the trust condition, Member A paid funds out to the bank. This allowed the funds in his trust account to be reduced to \$8,700.00 without the member having obtained the consent of counsel or a further order of the court. He did so on the understanding that if the transaction did not close, the funds would be returned to him.

The member applied for a pardon from his conviction pursuant to Law Society Rule 5-101.1.

### Decision and Comments

Member A met all of the criteria under Law Society Rule 5-101.1. The Discipline Panel was then required to determine whether in all of the circumstances a pardon was appropriate. The Panel considered the member's heartfelt remorse over the circumstances, his subsequent clean record and insurance history and the fact that he had been a model member of the profession for

eighteen years, and exercised its discretion in favour of granting the member's application for a pardon.