



# DISCIPLINE CASE *DIGEST*

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Case 10-11

<b>Member:</b>	James Ronald Nadeau
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	June 28, 1990
<b>Particulars of Charges:</b>	Professional Misconduct (7 Counts): <ul style="list-style-type: none"><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [integrity] [x2]</li><li>▪ Breach of Chapters 2 and 9 of the <i>Code of Professional Conduct</i> [quality of service and failure to treat tribunal with courtesy and respect]</li><li>▪ Breach of Rule 5-42(2) of the <i>Rules of the Law Society of Manitoba</i> [failure to produce monthly trust reconciliations]</li><li>▪ Breach of Rules 5-43(1)(c) and 5-43(1)(f) of the <i>Rules of the Law Society of Manitoba</i> [failure to render a statement of account and overdrawing trust ledger]</li><li>▪ Breach of Rules 5-64(3) and 5-64(4) of the <i>Rules of the Law Society of Manitoba</i> [failure to respond to the Law Society within 14 days]</li><li>▪ Breach of Rule 5-72(2) of the <i>Rules of the Law Society of Manitoba</i> [failure to respond to the Complaints Investigation Committee]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	March 4, 2011
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Donald G. Douglas (Chair)</li><li>▪ Catherine Tolton</li><li>▪ Lorne Gibson (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Saul Simmonds for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Suspended for a period of 60 days beginning April 1, 2011</li><li>▪ Conditions on Practicing Certificate</li><li>▪ Costs of \$7,336.12</li></ul>

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**Breach of Integrity / Failure to Respond / Breach of Trust  
Accounting Rules /  
Failure to Treat Tribunal with Courtesy and Respect /  
Quality of Service**

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**Facts**

Following an assignment in bankruptcy, Mr. Nadeau gave a written undertaking to the Law Society that he would not sign any trust cheques until he advised the Society that he had obtained an absolute discharge and was thereafter relieved of his undertaking. During the period of his bankruptcy, Mr. Nadeau signed trust cheques drawn on his trust bank account and for a period of approximately 8 months in 2008, he signed all cheques drawn on his trust bank account contrary to his undertaking.

During the year 2008, Mr. Nadeau charged and collected GST and RST from his clients but he failed to remit such funds to the appropriate agency.

During the course of an investigation into his conduct, Mr. Nadeau was asked to provide certain specified files and records within 14 days of his receipt of such request but he did not provide any of the documents or records as requested. At the direction of the Complaints Investigation Committee, a Law Society investigator sent a further letter to Mr. Nadeau advising that the Committee had now directed him to provide the documents and records within 14 days. Although Mr. Nadeau responded to the further letter, he did not provide all of the outstanding documents and records. He then appeared before the Complaints Investigation Committee following which he was directed by the Committee to provide the outstanding documentation and records by a certain date. He did not provide any of the records within the time frame imposed by the Committee. Thereafter, Mr. Nadeau appeared before the Committee and while he had produced some of the requested records by the time of the appearance, he had still not produced all of the requested documentation and records.

Mr. Nadeau failed to produce monthly trust reconciliations for all pooled trust investment accounts for the period February 2008 until October 2008.

In October 2008, while acting for a client, Mr. Nadeau transferred the sum of \$1,000.00 to his trust account on account of fees, disbursements, RST and GST without first rendering a statement of account to his client, thereby overdrawing his trust ledger.

Mr. Nadeau also failed to respond to a letter sent to him by the Law Society within 14 days of the date by which he had received it.

A client retained Mr. Nadeau to act for him with respect to a criminal law matter and a trial date of October 21, 2008 was set for a hearing of the criminal charges. Mr. Nadeau failed to attend in court on that date to represent the interests of his client.

**Plea**

Mr. Nadeau agreed to enter a guilty plea with respect to seven charges of professional misconduct as outlined and the Society agreed to withdraw four other charges.

## **Decision and Comments**

The panel found Mr. Nadeau guilty of the charges based on his admissions and made a finding that he was guilty of professional misconduct.

## **Penalty**

The panel accepted the joint recommendation made by counsel for the Law Society and counsel for Mr. Nadeau with the exception of one proposed condition of practice that was altered slightly. Accordingly, the panel ordered that Mr. Nadeau be suspended from the practice of law for a period of 60 days commencing April 1, 2011. The panel also ordered that Mr. Nadeau be required to pay costs to the Law Society in the amount of \$7,336.12 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.

Upon resumption of active practice, the panel ordered that the following conditions be placed on Mr. Nadeau's practicing certificate:

- (a) He must not practice law except with a member who has been approved by the Society to act as his supervisor;
- (b) He must co-operate fully with his supervisor to enable the supervisor to fulfill his/her duties and obligations to the Society as his supervisor;
- (c) He must meet with his supervisor on a weekly basis, or at such other intervals acceptable to the Society;
- (d) He must follow any recommendations made by his supervisor relating to the supervision of his practice;
- (e) The supervisor will provide quarterly reports to the Society confirming that Mr. Nadeau is complying with all conditions imposed by the Discipline Panel and is following all of the recommendations of the supervisor;
- (f) The supervisor will immediately report to the Society anything that may be in violation of The Legal Profession Act, the Code of Professional Conduct and/or The Rules of the Law Society of Manitoba pertaining to his law practice and will immediately advise the Society if Mr. Nadeau is in breach of any of the terms of the conditions imposed by the Discipline Panel;
- (g) The supervisor will be Mr. Nadeau's designated member pursuant to Law Society Rule 2-77;
- (h) As an alternative to the foregoing conditions, Mr. Nadeau may make alternate practising arrangements (such as being employed as in-house counsel), subject to receiving prior written approval from the Society which approval may include such conditions that the Society deems fit to ensure that Mr. Nadeau receives adequate supervision in the course of such practising arrangements; and,
- (i) In any event, Mr. Nadeau will not be permitted to have a trust account, or signing authority on any trust account. Failure to comply with any of the conditions of practice will result in the immediate cancellation of Mr. Nadeau's practising certificate and his practising status will be changed to inactive. The conditions of practice will remain in effect for a period of one year commencing on the date Mr. Nadeau's status is changed to practising by the Society.

Failure to comply with any of the conditions of practice will result in the immediate cancellation of Mr. Nadeau's practising certificate and his practising status will be changed to inactive.

The conditions of practice will remain in effect for a period of one year commencing on the date Mr. Nadeau's status is changed to practising by the Society.