



# DISCIPLINE CASE *DIGEST*

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## Case 00-05

### MEMBER F

Winnipeg, Manitoba

### Particulars of Charges

Dishonourable or Questionable Conduct

### Date of Hearing

September 14, 2000

### Panel

D. G. Ward, Q.C., (Chair)

J. E. Neufeld, Q.C.

J. W. Hedley

### Disposition

- Not Guilty

### Counsel

J. R. Gallagher for The Law Society of Manitoba

G. M. Wood for the Member

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## Dishonourable or Questionable Conduct

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### Facts

Lawyer A acted for a client in domestic proceedings. The client was unable to pay the account for legal services performed on his behalf. An arrangement was made whereby Lawyer A would accept, in full payment of the legal fees, the sum of \$5,000.00 from a severance package the client was to receive from his employer. As security for the fees the client executed an irrevocable assignment of proceeds authorizing his employer to pay to

Lawyer A and her firm the sum of \$5,000.00 from the severance package.

The employer issued a cheque in the amount of \$4,098.18 payable to the client. Pursuant to the irrevocable assignment of proceeds, Lawyer A received the cheque and left two telephone messages requesting that the client attend at the office to endorse the cheque. Lawyer A printed on the back of the cheque that it was to be paid to the order of the firm's trust account regarding the client's file number and left the cheque at the reception area for endorsement by the client. The client did not attend to endorse the cheque.

Lawyer A later spoke to Member F, the senior member of the firm, who advised that the cheque could be deposited into the firm's trust account without the client's endorsement. Later the same day when Member F was preparing a bank deposit he observed that the client payee's name was not on the back of the cheque. Member F then entered the name of the client payee on the back of the cheque and deposited same to the firm's trust bank account. The cheque cleared the bank and the client later complained to the Society that his lawyer or someone else had signed his name to the cheque so that it could be cashed.

### **Decision and Comments**

A hearing was held into the charge. Evidence was presented by way of a statement of agreed facts as well as *viva voce* testimony by Member F. The member testified that it was his custom to deposit cheques payable to clients into his pooled trust account whether or not the client had endorsed the cheque. Member F also presented evidence to the effect that on one other file unrelated to the present matter, he had received cheques payable to his client and had deposited the cheques into his pooled trust account without the cheques being endorsed by his client. It was admitted by the Society that financial institutions will allow a cheque which is payable to a third party to be deposited into an account without the payee endorsing the cheque.

In view of the evidence and the admission by the Society as to third party cheques, the Committee determined that it made no sense for the member to have forged the client's signature on the back of the cheque when all he had to do was print the client's name on the back of the cheque and the bank would have accepted the cheque for deposit into the trust account. The Committee felt that Member F had nothing to gain by forging the signature of the client on the back of the cheque, since the client's signature was not necessary in order to negotiate the cheque.

There was an issue as to whether the client's name on the back of the cheque was in "printed" or "written" form. Member F testified that he had "printed" the client's name. On reviewing the back of the cheque the Committee found that it was not readily apparent whether the client's name had been signed or printed. However, the Committee considered that this was irrelevant as the Society had admitted that the bank would accept a cheque payable to the client without the client having endorsed the cheque and this was the only issue in the matter.

The Committee concluded that there was no credible evidence before it that Member F

intended or attempted to forge the signature of the client on the back of the cheque. In the view of the Committee the member provided a credible and reasonable alternative explanation which the Committee had no reason not to accept. The Committee was not satisfied that the Society had provided convincing evidence to prove the charge and it was the unanimous decision of the Committee that the charge be dismissed.

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