



# DISCIPLINE CASE *DIGEST*

---

Case 94-12 (AMENDED)

<b>Member:</b>	<b>Member A</b>
<b>Jurisdiction:</b>	Manitoba
<b>Called to the Bar:</b>	June 23, 1983
<b>Particulars of Charges:</b>	Professional Misconduct <ul style="list-style-type: none"><li>▪ Breach of court order and trust condition</li></ul>
<b>Date of Hearing:</b>	July 27, 1994
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Robert Dewar (Chair)</li><li>▪ Doreen Kelly</li><li>▪ Norman Cuddy</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Garth Smorang for The Law Society of Manitoba</li><li>▪ Randy McNicol, Q.C. for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$1,000.00</li><li>▪ Costs of \$650.00</li></ul>

---

## Breach of Court Order and Trust Condition

---

### Facts

Member A, who was called to the Bar on June 23, 1983, appeared before the Discipline Committee on July 27, 1994.

Member A acted for client G who was sued by Party T. On G's behalf, Member A brought an Application to set aside Default Judgment in the Court of Queen's Bench. Judgment was set aside on terms, one of which required Member A to retain \$18,000.00 from the net sale proceeds of his client's property in his trust account pending disposition of the action or agreement of the parties or further order of the court.

Subsequent to the order, Member A wrote to the solicitor for T requesting discharges of judgments which had been registered against the property following default and before the Application. These were sent to Member A in trust and on the condition that \$18,000.00 from the sale proceeds of the properties would be held in his trust account until such time as otherwise ordered by the court or by consent of counsel. Member A accepted this trust condition and the discharges of judgments were filed.

Subsequently, Member A allowed the funds in his trust account to be reduced to \$8,700.00 without obtaining consent of counsel or a further order of the court.

### **Comments of the Discipline Committee**

Member A admitted the above-noted charge before the Discipline Committee.

The Committee accepted Member A's submission that payment of funds, which resulted in the deficiency in his trust account, was a mistake and that there was no intention on Member A's part to engage in sharp practice or dishonesty.

However, the Committee found that Member A failed to fully consider the provisions of the court order and the trust condition imposed upon him. The Committee noted that the practice of law in this jurisdiction depends upon the imposition of trust conditions and conscientious and careful observance of them is required. Accordingly, the Committee viewed the breach as serious.

### **Findings and Penalties**

The Committee imposed a fine of \$1,000.00 as well as costs of \$650.00 and allowed Member A ninety (90) days from the 27<sup>th</sup> of July, 1994, in order to pay the fine and costs.

As to costs, the Committee accepted Mr. McNicol's submission that outside counsel was required to handle this prosecution on behalf of the Society due to a conflict of interest on the part of Law Society's counsel, and that Member A should not be penalized to a greater extent as a result of the Law Society's having to retain outside counsel.

### **Pardon**

Member was granted a pardon on March 4, 2010. See Discipline Case Digest #09-15.