



# DISCIPLINE CASE *DIGEST*

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## Case 94-16

**MEMBER A**  
Manitoba

**Particulars of Charges**  
Incompetence

- mental incapacity or infirmity

**Date of Hearing**  
September 13 & 14, 1994

**Panel**  
Douglas Yard, Q.C. (Chairperson)  
Bruce Miller, Q.C.  
Hymie Weinstein, Q.C.

**Disposition**

- not proven
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## Incompetence

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### Facts

Member A appeared before the Discipline Committee on September 13 and 14, 1994.

The Member was charged with incompetence as a result of concerns that he might be suffering from mental incapacity or infirmity which impaired his ability to perform legal services which he had undertaken to perform. The basis for the concerns were incidents that involved:

- i. a Statement of Defence in reponse to a Statement of Claim filed against him for an assault in 1990 wherein he stated that he was incapable of forming and did not have

- the intent to commit an assault upon the plaintiff;
- ii. at the Examination for Discovery with respect to the above noted matter, he advised that his age was "one";
- iii. he advised the Law Society that he had no respect for psychiatrists or their philosophies or ethics;
- iv. a salesperson had attended at his office and was confronted by the member sitting behind his desk holding a box on his lap which had been made to look like a television.

The member did not dispute any of the factual allegations against him. Medical evidence was called to show that the member was a manic depressive, however there had been no recent examination of the member by a medical practitioner.

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

The Committee noted that there was no direct evidence that the member was suffering from any impairment to perform legal services as there was no legal work of the member brought before the Committee for the examination or any clients brought before the Committee to give evidence. Also there was no evidence from other members of the profession as to their dealings with that member.

The Committee found that they were being asked to infer from a series of discreet incidents occurring over a four year period that the member was incompetent by reason of his suffering from some sort of mental incapacity or infirmity. The Committee noted that although these events were disturbing, bizarre, unusual and inappropriate they could not find that the performance of legal services was impaired as a result.

### **Findings and Penalties**

The Committee was unable to find that the Society had proven a case of incompetence. However, the committee did determine that the behavior the member exhibited in the past was inappropriate and unacceptable. In general terms, they found that much of his behavior was bizarre, odd, eccentric, peculiar, immature and capable of bringing the profession into disrepute.

The Committee advised the member that if it was not already evident to him, if he continued to behave in the way as set out in the evidence, the Society might well be forced to use its disciplinary process against him again.

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