



DISCIPLINE CASE *DIGEST*

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Case 95-01

MEMBER B
Manitoba

Particulars of Charges

Professional Misconduct (1 count)

- conflict of interest between clients

Date of Hearing

November 23, 1994

Panel

N. Cuddy
D. Kelly
J. Ginnell, Q.C.

Disposition

- Acquitted

Counsel

Daniel Dutchin for The Law Society of Manitoba
Fred Bortoluzzi for the member

Conflict of Interest

Facts

Member B appeared before the Discipline Committee on November 23, 1994. Member B was retained to act on behalf of the purchasers of property. Member B was also acting on behalf of the vendor but had not advised the purchasers of that fact at the outset nor advised them to seek independent legal advice. The vendor was acting on his own behalf in regards

to obtaining proper title to the property as it had been property previously owned by his parents and title had not yet been transferred. The vendor had problems in regards to the transfer of land which delayed title being transferred to the purchasers. However, Member B failed to properly represent the interests of the purchasers in that regard. When issues arose between the vendor and the purchasers as to the property and payments to be made towards the property, Member B failed to refer both parties to independent counsel.

Comments of the Discipline Committee

The Committee was convinced that all of the clients of Member B were poorly served. There were no obvious conflicts of interest between the clients and much of the work performed by Member B led his clients further into conflict rather than resolving the disputes. The Committee felt that Member B ought not to have acted for either of the parties once the various conflicts arose.

The Committee however was of the view that Member B should have been charged with failing to provide his clients with conscientious, diligent and efficient service rather than the specific charges based upon the actions to be taken by lawyers finding themselves in a conflict of interest situation.

The Committee also felt it was unable to accept the evidence of one of the purchasers without corroboration.

Findings and Penalties

Although the Committee had great misgivings about the manner in which Member B served his clients, they were not satisfied that the specific allegations contained in the citation had been proven and the member was acquitted.

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