



# DISCIPLINE CASE *DIGEST*

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## **Case 96-27**

**REMI CECIL SMITH**  
Winnipeg, Manitoba

**Called to the Bar**  
June 28, 1979

**Particulars of Charges**  
Professional Misconduct

- failure to comply with trust condition
- failure to show courtesy and good faith toward another lawyer

**Date of Hearing**  
February 3, 1997

**Panel**  
Douglas Abra, Q.C. (Chair)  
David Frayer, Q.C.  
Paul Brett

## **Disposition**

- Reprimand
- Costs of \$1,350.00

**Counsel**  
Garth H. Smorang, Q.C. for the Law Society  
Alain J. Hogue for the member

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**Breach of Trust Condition**

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## **Facts**

Mr. Smith appeared before the Discipline Committee on February 3, 1997.

Mr. Smith, in the course of acting for a vendor on a residential real estate transaction accepted a trust condition imposed upon him by the purchaser's solicitor that he immediately and forthwith upon being provided with the balance of funds owing, provide registerable discharges of a number of documents, including a particular caveat. At the time Mr. Smith accepted this trust condition, and thereafter when he received the balance of sale proceeds, which he disbursed, he did not have a registerable discharge executed by the caveator in his possession.

Although Mr. Smith believed, in the early stages of the transaction, that the caveator intended to execute a discharge, it became clear some months after the transaction closed that she would not. Accordingly, Mr. Smith provided to the purchaser's solicitor a Request to issue a 30 day notice to vacate.

Notwithstanding that the Request was executed by the purchaser's lawyer and returned to Mr. Smith in June, 1995, Mr. Smith did not register same in the Winnipeg Land Titles Office until November, 1995, and did not serve the caveator with the Notice to Vacate until January, 1996. Mr. Smith ultimately provided the purchaser's lawyer with the Affidavit of Service and a Request to remove the caveat in May, 1996.

From approximately June, 1995, until January, 1996, the purchaser's lawyer repeatedly requested information from Mr. Smith as to the status of the caveat. On numerous occasions, Mr. Smith either personally, or through his staff, either did not return telephone messages, or alternatively, promised to provide information which he did not provide.

## **Decision and Comments**

Mr. Smith pleaded guilty to the two counts of professional misconduct contained in the Citation. The Committee was of the view that Mr. Smith breached the trust condition imposed on him by using the sale proceeds and related documents without having in his possession a registerable Discharge. Further, his actions in not providing registerable documents until almost one and one-half years after the transaction did not mitigate the breach of a trust condition.

As to the charge of failure to show courtesy and good faith towards another lawyer, Mr. Smith did not answer with reasonable promptness, telephone communications from the purchaser's lawyer, for a period from approximately June, 1995, to January, 1996.

## **Penalty**

The Committee imposed a reprimand on both counts and costs in the amount of \$1,350.00.

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