



# DISCIPLINE CASE *DIGEST*

---

[Discipline Case Digest Index](#) ❖ [Law Society Home Page](#)

## **Case 97-03**

**RICHARD ANTHONY WARD**  
Winnipeg, Manitoba

**Called to the Bar**  
June 25, 1976

**Particulars of Charges**  
Professional Misconduct

- conflict of interest
- tool or dupe of unscrupulous clients

**Date of Hearing**  
May 13, 1997

**Panel**  
Eric B. Irwin (Chair)  
Donald G. Douglas  
Norman H. Sims, Q.C.

## **Disposition**

- Suspension for 60 days
- \$1,500.00 costs

**Counsel**  
E.R. Dawson, Q.C. for the Law Society  
P. Moss for the Member

---

## **Conflict of Interest**

---

## **Facts**

Mr. Ward was charged with professional misconduct in the following circumstances.

Mr. Ward acted for A, a purchaser of certain real property for \$480,000.00. At about the same time Mr. Ward acted for certain further purchasers of the same property for \$776,000.00. The second purchasers were the real estate agent on the original sale and his wife. Both were acquaintances of A. the property was eventually transferred directly from the original owner of the property to the second purchasers' nominee, thus by-passing a transfer to A. Mr. Ward executed the declaration as to value contained in the transfer of land and certified its value to be \$480,000.00. the second sale was partially financed by a trust company, T, and the purchase price was made up of mortgage proceeds of \$582,000.00 together with a promissory note back to A unsecured by any mortgage. The second purchasers' nominee was a numbered company, incorporated by Mr. Ward which held no other assets.

Mr. Ward also acted for T, and was instructed by it in its Letter of Instruction of May 31, 1990, to request the mortgage funds when he was "satisfied that we can safely advance" them and "insofar as we will be relying on your interim report and opinion we will assume that the deliver of the foregoing documentation means that we may safely advance the loan proceeds to your for disbursement". Despite this, Mr. Ward never advised the mortgage company of the first sale, or that the second sale was not at arms length, or of his certification to the Land Titles Office that the value of the property was \$480,000.00.

The funds were advanced and eventually default occurred resulting in a substantial loss to T.

## **Decision and Comments**

Mr. Ward entered a plea of guilty to the charge of acting for A, the second purchasers and their nominee, and T when there was, or was likely to be conflicting interest between such clients. It was admitted by Mr. Ward that he had failed to make adequate disclosure of all of the material facts to T so as to enable it to make an informed decision about whether or not to have Mr. Ward act despite the existence or possibility of a conflicting interest. He also entered a plea of guilty to the charge that when advising and acting on behalf of the second purchasers and their nominee with respect to the mortgage loan they sought and obtained from T, he failed in his duty to be honest and candid by allowing himself to become the tool or dupe of unscrupulous clients

In the Committee's view, there were a number of factors existing which ought to have been apparent to Mr. Ward at the time he acted including:

1. One of the subsequent purchasers was the real estate agent for the vendor on the original transaction and as such had an obligation to obtain fair market value of a sale of the property;

2. At the time the subsequent purchaser and his wife entered into the agreement with A to purchase the property A had not yet concluded an agreement to purchase the property from the original vendor;
3. The absence of a mortgage back to the vendor to secure the balance was most unusual if the arrangements were bona fide.

The Committee stated that all counsel must be deemed to know and accept that in agreeing to act for a number of clients whose interests may conflict there is an absolute obligation to be open and candid with each of them. It was not contradicted that Mr. Ward's lack of disclosure of relevant information exposed his client T to a risk of loss that had it known the truth it would not have incurred.

### **Penalty**

The member was suspended from practice for 60 days and assessed costs of \$1,500.00.

[Top of page](#)

[Index](#)