



# DISCIPLINE CASE *DIGEST*

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## **Case 97-09**

**MEMBER A**  
Manitoba

### **Particulars of Charges**

Professional Misconduct

- conflict of interest
- entering into a business transaction with clients without advising them to obtain independent legal advice
- lending money to client without advising the client to obtain independent legal advice

### **Date of Hearing**

November 19 and 20, and December 4, 1996

Written Decision: February 24, 1997

### **Panel**

C.R. MacArthur, Q.C., Chair

L.D. Wasel

G.E. Chapman, Q.C.

### **Disposition**

- Acquitted

### **Counsel**

C. Kristin Dangerfield for the Law Society

Paul D. Edwards for the member

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## **Conflict of Interest**

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## **Facts**

Member A was retained by Mr. J to act in the bankruptcy of a company and also with respect to real estate matters involving Mr. and Mrs. J.

On the advice of Member A, a new company (“the Corporation”) was formed. Mr. J and his wife contributed \$16,000.00 for 50% of the shares. Four new shareholders, one of whom was Member A, contributed \$4,000.00 each and divided equally amongst them the remaining 50% of the shares. Member A assumed responsibility for the banking and financial arrangements of the Corporation.

In early 1991, Member A loaned the Corporation \$10,000.00 to purchase product. Mr. J. claimed that he was not advised that the loan had been made by Member A. When the Corporation was in a position to repay the loan, Member A prepared a security agreement in his favour authorized by a Directors’ Resolution.

Eventually, one of the shareholders, Mr. S., purchased the interests of the other minority shareholders. Member A represented Mr. S. in the purchase of the other shareholder’s interests.

The first count in the Citation charged Member A with placing himself in a conflict of interest by acting for Mr. and Mrs. J., Mr. S. and the Corporation and failing to advise Mr. and Mrs. J. to obtain independent legal advice, then continuing to act on behalf of Mr. S. and the Corporation when a dispute arose between them and Mr. and Mrs. J.

The second and third counts in the Citation charged Member A with entering into a business transaction with Mr. and Mrs. J. and loaning money to them without first advising them in writing to obtain independent legal advice about the transactions.

### **Decision and Comments**

The Committee acquitted Member A of the charges. The Committee accepted the evidence of Member A and found that Member A was not acting on behalf of Mr. S. or Mr. and Mrs. J. and that he had not been retained to protect their interests. Once a dispute arose between the parties, Member A had advised both Mr. S. and Mr. and Mrs. J. that he was unable to act on behalf of any one of the parties.

It was the decision of the Committee that Member A had not entered into a business transaction with Mr. and Mrs. J. as to the \$10,000.00 loan, but rather, this was a transaction entered into with the Corporation and therefore, Member A was not obligated to advise Mr. and Mrs. J. to obtain independent legal advice. The Committee found that in purchasing a minority shareholding in the Corporation, Member A should have advised Mr. and Mrs. J. to obtain independent legal advice. However, the member had conducted himself with honesty and integrity and in the circumstances, his actions did not constitute professional misconduct.

As to the third charge of loaning money to Mr. and Mrs. J. without advising them in writing to obtain independent legal advice, the Committee found that in fact Member A had loaned

the money to the Corporation and not to Mr. and Mrs. J.

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