



DISCIPLINE CASE *DIGEST*

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Case 97-12

Member B
Manitoba

Particulars of Charges
Professional Misconduct

- Use of confidential information to disadvantage of client
- Conflict of interest
- Failure to be frank and candid with the Court

Date of Hearing
November 24 and December 1, 1997

Date of Decision
January 19, 1998

Panel
J.W. Hedley, (Chair)
D.G. Douglas
C. Wright

Disposition

- Acquitted

Counsel
J.R. Gallagher for The Law Society of Manitoba
J.G. Dangerfield, Q.C. for the Member

Conflict of Interest

Facts

Member B was retained by a client who was charged with assault causing bodily harm. The complainant in the assault was a former client of Member B. At the trial on the assault matter, the complainant raised with the court that he had previously been represented by Member B and that the member possessed confidential information as to the business and affairs of the complainant which made the complainant uncomfortable in being cross-examined by the member. Member B advised the court that he had acted for the complainant in the past on unrelated matters. The court allowed Member B to cross-examine the complainant.

The complainant subsequently made a complaint to the Law Society about the conduct of the member, and in particular, that in cross-examining the complainant Member B had made use of confidential information obtained previously while acting on behalf of the complainant on other matters. In responding to the concerns raised by the complainant, the member took the position that any work previously done on behalf of the complainant was unrelated to the criminal assault and that the cross-examination of the complainant was restricted to matters raised during the complainant's examination-in-chief.

Decision and Comments

Following a hearing, the Discipline committee decided that it was not satisfied on the evidence that the complainant had imparted any "relevant confidential information" to Member B. In the opinion of the Committee, this threshold test had to be met before the member could be convicted of any of the three charges contained in the Citation. Accordingly, the Committee found that the member was not guilty of professional misconduct and dismissed the charges.

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