



DISCIPLINE CASE *DIGEST*

Case 98-07 (AMENDED)

Member:	Member B
Jurisdiction	Manitoba
Called to the Bar:	June 26, 1986
Particulars of Charges	Professional Misconduct <ul style="list-style-type: none">▪ Failure to comply with an Order to Pay
Date of Hearing:	September 30, 1998
Panel:	<ul style="list-style-type: none">▪ R.A. Dewar, Q.C. (Chair)▪ D.F. Plett, Q.C.▪ S.D. Phillips
Counsel:	<ul style="list-style-type: none">▪ Joe R. Gallagher for The Law Society of Manitoba▪ D.K. Paterson for the Member
Disposition:	<ul style="list-style-type: none">▪ Reprimand▪ Costs of \$1,135.00

Breach of Order to Pay

Facts

In 1995, Member B was retained by a client concerning domestic proceedings involving the client and her former common-law spouse. The two parties owned a residence and they accepted an offer to purchase the property. It was agreed between the couple that Member B would handle the sale transaction on their behalf. An Order to Pay was executed by the couple as vendors of the property. A term of the Order to Pay provided that once the transaction was concluded all of the remaining net proceeds of the sale would be held in trust by Member B's firm until such time as all property issues, including the division of assets and liabilities, were resolved between Member B's client and her former common-law spouse. After the transaction concluded, Member B advised in her reporting letter that the remaining net proceeds were being held in Member B's trust account until the property issues were settled.

In late 1996, prior to all the property issues being resolved, the former common-law spouse received information that Member B's client had received her share of the net sale proceeds. Member B subsequently confirmed that she had in fact distributed the ½ share of the net sale proceeds to her client before all property issues had been resolved. Member B believed that as no property claims had been brought by the former common-law spouse there was no prejudice to him in releasing Member B's client's share of the net sale proceeds.

Decision and Comments

The Committee accepted the guilty plea and on the basis of the information provided, found Member B guilty of professional misconduct. The Committee was of the view that the breach of the term of the Order to Pay was similar to a breach of a trust condition and that Member B had failed to discharge with integrity the duties she owed to her clients. Two of the committee members agreed to accept the joint recommendation made by counsel. The third member of the panel did not accept the joint recommendation and would have imposed a fine on the member together with the costs.

Member B appeared before the Discipline Committee on September 30, 1998 and entered a plea of guilty to the charge.

Penalty

The majority decision of the Committee was adopted and the member was reprimanded and ordered to pay costs in the amount of \$1,135.00. It was further ordered that the costs be paid at the rate of \$150.00 per month commencing November 1, 1998, with an acceleration clause to the effect that if default occurred in a payment the entire balance outstanding as at the date of default would become due and owing and would be payable within 30 days.

Pardon

Member was granted a Pardon on June 19, 2012. See Discipline Case Digest #12-03.