



DISCIPLINE CASE *DIGEST*

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Case 99-08

JOHN LORING PATRICK SINCLAIR
Winnipeg, Manitoba

Called to the Bar
June 7, 1965

Particulars of Charges
Professional Misconduct (8 counts)

- Failure to serve clients in a conscientious, diligent and efficient manner (x 3)
- Failure to conform to the rules respecting accounts (x 3)
- Failure in duty to preserve client's property and to produce client file upon request
- Failure to show courtesy to fellow lawyer

Date of Hearing
July 18 and November 5, 1996,
March 10 - 12, 15 and 16, June 24 and 25, July 5 and 6, and December 8, 1999

Panel
Lawrence R. McInnes, Q.C., Chair
Dr. Claudia Wright
Lewis D. Wasel

Disposition

- Acquitted of two counts:
 - failure to serve clients in a conscientious, diligent and efficient manner
 - failure in duty to preserve client's file and to produce client file upon request
- Guilty of six counts:
 - Failure to conform to the rules respecting accounts (x 3);
 - Failure to serve clients in a conscientious, diligent and efficient manner (x 2);
 - Failure to show courtesy to a fellow lawyer.

- Fine of \$8,000.00;
- Costs of \$12,000.00;

Counsel

Eleanor R. Dawson, Q.C., David M. Wright and Joe R. Gallagher for The Law Society of Manitoba

Gavin M. Wood for the Member

Failure to Conform to the Rules Respecting Accounts

Facts

In early December 1992, Mr. Sinclair was retained by Clients A concerning a child custody matter. Between the date they first retained Mr. Sinclair and January 15, 1993, the clients made five payments totalling \$4,000.00 to Mr. Sinclair as a retainer for legal services to be performed. The funds were not deposited into a trust bank account by Mr. Sinclair and no trust ledger card or trust records were kept respecting the funds. Mr. Sinclair took the \$4,000.00 as fees but did not send or provide his clients with any statements of account.

Following a three and a half day trial in November 1993, the clients were unsuccessful in gaining custody of the child. A decision was made to pursue an appeal and a further \$6,000.00 was paid to Mr. Sinclair in December 1993. The funds were not deposited into a trust bank account, nor were any trust ledger card or trust records maintained concerning the funds. The appeal of the child custody matter was heard and dismissed in September 1994. Mr. Sinclair took the \$6,000.00 as fees without sending or providing any statements of account to the clients.

In April of 1990, Mr. Sinclair was retained by Client B on two civil actions filed earlier by the client respecting personal injuries sustained in an October 1987 motor vehicle accident. Mr. Sinclair received notice in November 1991 of a motion brought by a defendant to strike one of the claims. Although he had earlier received instructions from the client to discontinue this particular claim, Mr. Sinclair had not done so. After being served with the motion to strike the claim, Mr. Sinclair failed to notify the client of the motion, but wrote to counsel for the defendant advising that the motion would not be opposed and that he would not be appearing at the motion hearing. The Master hearing the matter allowed the motion and ordered that the claim be dismissed and ordered costs of \$609.00 against Mr. Sinclair's client.

Following eleven days of hearing into the six aforementioned charges, the Discipline committee found Mr. Sinclair guilty of four of the charges and acquitted him of the other two charges. On December 8, 1999, the Committee held a disposition hearing to consider the penalty to be imposed on Mr. Sinclair for the four charges for which he had been found

guilty. At that time, Mr. Sinclair also entered a guilty plea to two further unrelated charges of professional misconduct, the facts of which are outlined below.

Mr. Sinclair was retained by Client C in four separate matters. At various times, Mr. Sinclair requested monies from the client to pay for legal services performed. In response to the requests, the client provided a series of six cheques totalling \$9,000.00 to Mr. Sinclair. The client had not been sent or provided with any statements of account prior to or at the time of giving the cheques to Mr. Sinclair. The client funds were trust monies and should have been deposited to Mr. Sinclair's pooled trust account. Instead, Mr. Sinclair deposited the cheques to his general bank account.

Mr. Sinclair was retained and represented a client in discipline proceedings before the client's governing body and in an appeal to the Court of Queen's Bench from the decision of the governing body. In June 1998, Mr. Sinclair appeared in the Court of Queen's Bench at the appeal hearing in the appeal. In his oral argument, Mr. Sinclair's conduct towards opposing counsel was not characterized by courtesy. Mr. Sinclair launched into a personal attack on the integrity of opposing counsel including references that during the discipline proceedings counsel had misled and been untruthful in statements made to the discipline panel.

The presiding judge found Mr. Sinclair's comments to be shocking and so advised him, at which point the personal nature of the attack ceased. After handing down a decision in the appeal, the presiding judge issued a supplemental judgment concerning the conduct of Mr. Sinclair at the appeal hearing. The judge found that opposing counsel had not misled or made any misrepresentations to the discipline panel. In fact, the judge found that, if there was any attempt to mislead at all, it was in Mr. Sinclair's argument before the Court.

Decision and Comments

A joint recommendation had been put forward to the Committee as to penalty. The Committee accepted the joint recommendation with respect to the charge of failing to show courtesy to opposing counsel. The Committee did not, however, accept the joint recommendation on the other charges, particularly the charges that related to breaches of the rules respecting accounts. The Committee expressed the view that the joint recommendation did not send a sufficiently strong message to either Mr. Sinclair or other members of the profession that the trust accounting rules of the Society are there to protect the public. The Committee felt that there had to be a strong deterrent aspect to the sentence to stress that when a member starts breaching the trust accounting rules, it can be the beginning of a slide down a slippery slope.

Penalty

The Committee imposed the following penalty:

- a. On the three charges involving Client A, a fine of \$1,000.00 on each charge;
- b. On the charges relating to Client B, a fine of \$500.00;

- c. On the charge relating to Client C, a fine of \$3,000.00;
- d. On the charge of failing to show courtesy to a fellow lawyer, a fine of \$1,500.00;
and
- e. Costs in the amount of \$12,000.00.

The fines and costs totalling \$20,000.00 were ordered to be paid by way of post-dated cheques at the rate of \$300.00 per month commencing February 1, 2000 with an acceleration clause if default occurred.

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