

REASONS FOR DECISION

IN THE MATTER OF:

LAWRENCE RAMSAY CRANE, Q.C.

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT, C.C.S.M. c. L 107

Appearances:

Chairperson: Grant Mitchell, Q.C.

Panel Members: E. William Olson, Q.C.
Jim Wolfe

Counsel for The Law Society of Manitoba: C. Kristin Dangerfield

Counsel for the Member: Steve Vincent

Sentencing hearing on May 8, 2014

Reasons for Decision delivered: May 21st 2014

Mr. Crane pleaded guilty to a charge that he committed professional misconduct in that while acting as solicitor for the Estate of D.V., he charged a fee that was not fully disclosed, contrary to Chapter 11 of the *Code of Professional Conduct*, adopted by the Benchers of The Law Society of Manitoba, when he failed to ensure that his client's consent to the fees that he charged was fully informed.

The parties submitted an agreed statement of facts and made a joint recommendation on disposition, that Mr. Crane be fined \$3,500.00 and that he pay a \$3,000.00 contribution to the Society's costs. At the conclusion of the hearing on May 8, 2014, the panel informed the parties that it had unanimously decided to accept the joint recommendation, and so ordered, and indicated that reasons for that decision in writing would follow. Mr. Ramsay complied with the order that day. What follows are the panel's reasons.

Mr. Crane practiced for almost 44 years with the Aikins firm before retiring at the end of January, 2011. He has no prior discipline from the LSM. He has cooperated throughout the investigation of this matter. Although initially three charges were laid against him in relation to this transaction, following a review by an independent expert in the field of estate practice, the LSM agreed to accept a guilty plea to just the charge above and to withdraw the other 2.

Mr. Crane accepted a retainer to act for the estate of D.V. in September, 2005. Mr. Crane had been legal counsel to D.V. and her late husband for over 30 years, and was their personal friend as well. D.V.'s only brother, G.D., survived her and was the executor and sole beneficiary of her Estate. G.D. lived in Arizona when D.V. died but came to Winnipeg for the funeral. He provided a handwritten retainer to Mr. Crane, asking him to act for the Estate, to act as a personal representative for the Estate on behalf of G.D., and to provide some personal legal services for G.D. that were over and above the administration of the estate. For all professional services, it was agreed that the hourly rate would be \$200.00.

Mr. Crane did the work set out in the retainer agreement, and in a timely way. All of the work was to be drawn from the Estate, as G.D. was the sole beneficiary and it would have been inconvenient for G.D. to obtain Canadian funds to pay Mr. Crane's invoices.

As he performed the various services, Mr. Crane rendered statements of account periodically, one in 2005, 2 in 2006 and 2 in 2007. The total amount invoiced was \$42,472.50. The invoices showed details of the services performed, but they did not show the amount of time spent on each item, and did not show which services related to representing the Estate, which to the administration of the Estate, and which to the other personal legal services. Computer time records were reviewed and the charges are consistent with the time spent multiplied by the agreed hourly rate of \$200.00 per hour. Mr. Crane spent 11 hours on service to the Estate, 121 hours doing executor work and 83 hours doing legal work unrelated to the Estate.

The Queen's Bench Rules set out a tariff of \$4,100.00 for the first \$300,000.00 of an estate. The Rules allow for additional fees to be charged with the informed consent of the beneficiary, or

after an assessment by the Court. The invoices issued by Mr. Crane do not show how the tariff was applied, or offer any explanation as to why the fees were substantially higher than the tariff provides.

It is important to note that the charge to which Mr. Crane has pleaded guilty does not allege that his fees were unreasonable. The sole issue is the failure to disclose.

G.D. has died since these transactions were completed and before these files were reviewed. He at no time complained about the amount of the fees charged or the amount of disclosure. This misconduct charge arose out of a spot audit three years after the work was performed.

Under QB Rule 74.14(14), a lawyer retained by a personal representative is required to provide the executor and beneficiaries with Form 74AA within 60 days of a grant of probate or letters of administration. Mr. Crane believes that he served this on G.D. but there is no documentary proof that this occurred. That is not the specific or exclusive basis of this charge, however.

The invoices contain detailed information about services performed. With the same information showing the amount of time spent on each, and which of the three elements of the retainer each entry related to, no charge would have been warranted, especially if Mr. Crane had also informed G.D. about the tariff amount, and the criteria for exceeding the tariff, and the provisions of s. 90(1) of *The Trustee Act*.

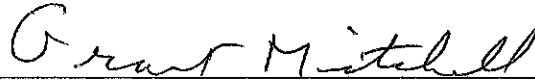
There is no dispute that the fees charged exceeded the tariff and that the basis of charging the fees was not adequately disclosed, or that this constitutes professional misconduct under the *Code*. The parties filed a variety of precedent decisions on similar misconduct, some of which involved imposing a greater penalty than the one recommended in this case.

There are many mitigating factors, however, as outlined above, and they warrant the panel accepting the joint submission on penalty. In the absence of those mitigating factors, a greater penalty might well have been imposed, out of concern for the public interest. Those mitigating factors include:

1. the Member's long service, clear record and intervening retirement;
2. the Member's age (79) and declining health;
3. the plea of guilty to the count;
4. the absence of any complaint, objection or expressed concern of the sole beneficiary of this Estate;
5. the length of time between the violation and the prosecution; and
6. the absence of any complaint from the client and the fact that he signed successive orders to pay to cover the invoices rendered, and the release at the conclusion of the administration of the Estate.

In all of these circumstances, the panel unanimously agreed that the penalty recommended was appropriate for the offence admitted.

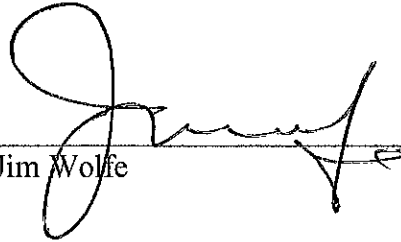
DATED this 21st day of May, 2014.



Grant Mitchell, Q.C.



E. William Olson, Q.C.



Jim Wolfe