

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF: CAROLINE B. CRAMER, Q.C.
AND IN THE MATTER OF: THE LEGAL PROFESSION ACT

REASONS FOR DECISION, DATED 17 SEPTEMBER 2015

This Panel of the Discipline Committee was convened to hear two counts of professional misconduct made against Caroline B. Cramer, Q.C., as set out in a Citation dated the 21st day of August 2015. The hearing took place on 17 September 2015. The Panel rendered its decision at the hearing but advised written reasons would follow.

At the outset of the hearing, the Panel was provided with an Agreed Statement of Facts executed by counsel for the Law Society and Ms. Cramer. This Agreed Statement and the Citation were filed as Exhibits at the hearing. A minor amendment to a Rule number was made at the hearing by consent.

Ms. Cramer conceded that the facts set out in the Agreed Statement constituted professional misconduct. Accordingly the Panel found Ms. Cramer guilty of two counts of professional misconduct, as described in the Citation.

The Agreed Statement of Facts includes a joint recommendation as to penalty. In accordance with the Thomas decision in our Court of Appeal, this Panel's role is limited; it should only depart from the joint recommendation if there are "clear and cogent reasons" for doing so.

The facts of the misconduct are brief and set out in the Citation:

1. While acting for your client B.C. (your "client") with respect to the preparation of her Wills, you failed in your duty to avoid a conflict of interest when you prepared Wills in 2005, 2010 and 2011, giving yourself in each a testamentary gift from the client contrary to Rule 3.4-39 of the Code of Professional Conduct adopted by the Benchers of The Law Society of Manitoba.

2. While acting for your client B.C. (your "client") with respect to the preparation and execution of her Will, you failed to provide a quality of service which is at least equal to that of a competent lawyer in a like situation, contrary to Rule 3.2-1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba.

Particulars

- (a) You failed to keep adequate notes and records of what transpired.
- (b) You failed to keep notes and records relating to the whereabouts of your client's original Will dated July 14, 2011.
- (c) You failed to ensure that the Will signed on July 14, 2011, was properly prepared in that you were to receive a bequest.
- (d) You failed to report to your client with respect to the legal services that you rendered.

One of the leading authorities on ethical matters for lawyers is "The Regulation of Professions in Canada" by James T. Casey. Mr. Casey states that "where the Legislature has entrusted the disciplinary process to a self-governing professional body, the Legislative purpose is regulation of the profession in the public interest." Mr. Casey points to a number of factors that might be considered while determining the appropriate penalty, and he itemizes a number of mitigating factors. Obviously these factors are meant to be relevant to all professions within Canada, not just the legal profession, and to have greater or lesser weight depending on the offence in question.

Ms Cramer's penalty, on a general level, should be consistent with those penalties imposed by the Discipline Committee in the past. Counsel for the Society referred the Panel to a number of prior decisions involving professional misconduct of a similar nature to Ms. Cramer's. Her misconduct would not be described as being the worst the Committee has seen in the past. The

recommended penalty is in line with those imposed in the past for similar misconduct.

On the more specific level of Ms Cramer's misconduct, mitigating factors are her prior 53 years of practice without a discipline history; no client suffered a loss by her conduct; no attempt was made by her to hide what she had done - indeed, correspondence she directed to the Public Trustee may well have brought attention to her failings.

Ironically, the last factor may also be considered an aggravating factor – how could someone who has practiced for 53 years and, more particularly in the area of Wills and Estates, not see the errors in her conduct? Preparing a Will for a client including a bequest to the lawyer and acting as witness to the Will in spite of being a beneficiary are truly fundamental departures from competent conduct.

As well, the Committee was troubled by Ms Cramer's explanation which was to the effect that she thought the testatrix was too poor to own the type of jewelry she purported to give to Ms Cramer in the Will witnessed by Ms Cramer and her common-law spouse. And yet Ms Cramer inquired of the Public Trustee, twice, if that official had been able to locate that jewelry.

In light of all of the circumstances of the offences and of the offender, and in light of the Thomas line of cases, the Panel found no reason to depart from the joint recommendation made by counsel for the Society and Ms Cramer.

Penalty

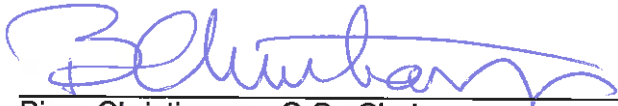
It is the Order of this Panel that:

(a) Ms Cramer is hereby reprimanded;

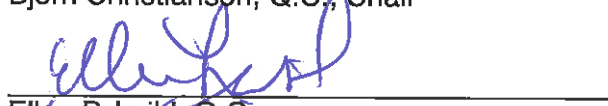
(b) Ms Cramer shall pay costs to the Society in the amount of \$2,500.00.

The fine and costs are to be paid by 17 November 2015.

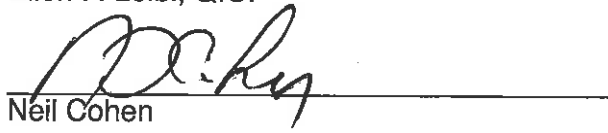
There is no order for publication beyond what is required by Rule 5-100(2).



Bjorn Christianson, Q.C., Chair



Ellen P. Leibl, Q.C.



Neil Cohen