



# DISCIPLINE CASE *DIGEST*

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Case 12-01

<b>Member:</b>	Joseph Jean Marcel Romuald Gregoire
<b>Jurisdiction:</b>	Roblin, Manitoba
<b>Called to the Bar:</b>	June 25, 1974
<b>Particulars of Charges:</b>	Professional Misconduct (6 Counts): <ul style="list-style-type: none"><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [breach of integrity]</li><li>▪ Breach of Rule 5-43(1)(c) of the <i>Rules of the Law Society of Manitoba</i> [transferring client funds from trust without Statements of Account being rendered]</li><li>▪ Breach of Chapter 11 of the <i>Code of Professional Conduct</i> [fees not fully disclosed]</li><li>▪ Breach of Rules 5-64(3) and (4) of the <i>Rules of the Law Society of Manitoba</i> [failing to respond to the Society][x3]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	June 11, 2012
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Richard I. Good (Chair)</li><li>▪ Brian A. Pauls</li><li>▪ Kenneth Molloy (Public Representative)</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia A.C. Senft for The Law Society of Manitoba</li><li>▪ Member Self Represented</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine of \$3,500.00</li><li>▪ Costs of \$5,000.00</li></ul>

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## Breach of Integrity / Quality of Service / Failure to Respond

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### Facts

Mr. Gregoire was the named Executor in the will of a client who named his brother as his beneficiary with the alternate beneficiaries being the surviving siblings, nieces and nephews. Mr. Gregoire was also the named Executor in the brother's will, who named his brother as his beneficiary with the alternate beneficiaries being the surviving siblings, nieces and nephews. One brother died November 6, 2009 and the other brother died November 13, 2009. Under the wills in question, the provisions for alternate beneficiaries were triggered as the brothers died seven days apart.

Mr. Gregoire began providing services as Executor for each Estate and also provided legal services to each Estate.

While providing such services for the Estates, on twelve occasions during a period of approximately five months, Mr. Gregoire transferred trust funds totalling \$42,000.00 from his pooled trust account to his general account for the recovery of his fees, without obtaining the consent of the beneficiaries of the Estates or the approval of the Court. Of that amount and while acting as lawyer for the Estates, on four occasions during a six week period, Mr. Gregoire transferred a total sum of \$9,500.00 on account of legal fees from his pooled trust account to his general account without first rendering statements of account.

The beneficiaries were the same for each Estate. Mr. Gregoire did not explain to all of the beneficiaries the basis upon which he proposed being compensated for services rendered to the Estates. Mr. Gregoire failed to provide the beneficiaries of the Estates with copies of Queen's Bench Form 74AA which stipulates an Estate tariff and sets out that only 40% of those fees are payable where the personal representative is a lawyer. From time to time, Mr. Gregoire withdrew trust funds from Estate assets on account of his fees without first preparing statements of account in relation to those fees.

With respect to another complaint matter, Mr. Gregoire failed to provide a written response to a letter sent to him by the Law Society within the time prescribed.

In relation to two other complaint matters, Mr. Gregoire failed to provide a complete written response to letters sent to him by the Law Society within the time prescribed.

### **Plea**

Mr. Gregoire entered a plea of guilty.

### **Decision and Comments**

The panel determined that all acts or omissions set forth in the charges were proven and that Mr. Gregoire was guilty of professional misconduct in all instances. The panel found the joint submission was reasonable and that the proposed sentence fell within an appropriate range of sanctions. The proposed penalties of a fine and payment of costs satisfied the mandate of the Law Society to protect the public, and to ensure the integrity of the legal profession.

### **Penalty**

The panel accepted the joint recommendation made by Mr. Gregoire and counsel for the Law Society and ordered that he pay a fine of \$3,500.00 and costs of \$5,000.00 towards the investigation and prosecution of the matter.