



DISCIPLINE CASE *DIGEST*

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Case 02-01

JAMES MICHAEL DAVID BOMEK
Flin Flon, Manitoba

Called to the Bar
June 26, 1986

Particulars of Charges
Professional Misconduct

- Payment of fees and disbursements from trust account prior to performing significant legal services (5 counts)
- Failing to provide Queen's Bench Form 74AA to beneficiaries (1 count)
- Charging fees to an Estate in excess of the fees allowed under Queen's Bench Rule 74.14(4) (1 count)
- Misleading the Law Society (1 count)

Date of Hearing
March 4, 2002

Panel
Bjorn Christianson, Q.C., (Chair)
James W. Hedley
Douglas A. Bedford

Disposition

- \$10,000.00 Fine
- \$15,000.00 Costs

Counsel
C. Kristin Dangerfield for The Law Society of Manitoba
Gavin M. Wood for the Member

Fees / Misleading The Law Society

Facts

Mr. Bomek represented the personal representatives on five separate estate matters. In each case he withdrew money from his trust account for the payment of his fees and disbursements prior to performing the legal services for which he had been retained.

In respect of one of the estate matters Mr. Bomek did not serve the beneficiaries with a copy of Queen's Bench Form 74AA.

In another one of the estate matters Mr. Bomek issued two statements of accounts for fees in the amount of \$6,923.94 and \$934.58 respectively. He did so prior to submitting the Request for Grant of Probate. The fees taken were in excess of tariff and Mr. Bomek failed to obtain either the consent of the beneficiaries or the approval of the Court prior to taking the additional fees.

In respect of another one of the estates, Mr. Bomek had been retained to recover certain life insurance proceeds on behalf of the deceased's widow. After having been advised that life insurance proceeds were available, Mr. Bomek immediately billed the estate \$5,000.00. In fact, the life insurance proceeds were not recovered until nearly two years later after the commencement by Mr. Bomek of litigation. Shortly after the fee was billed, an Auditor-Investigator with The Law Society of Manitoba wrote to Mr. Bomek inquiring into the basis for the fee and suggesting that the legal services for which he had been retained had not been performed. Mr. Bomek replied that prior to rendering the statement of account he had engaged in "numerous negotiations" relative to the matter and that the life insurance proceeds were "forthcoming". In fact, there had been no negotiations with respect to the insurance proceeds and there were no monies forthcoming as of the dates of both the transfer of fees and Mr. Bomek's reply to the Law Society.

Decision and Comments

Mr. Bomek pled guilty to eight counts of professional misconduct.

Penalty

The Committee accepted a joint recommendation that Mr. Bomek pay a fine of \$10,000.00 and ordered him to pay costs of \$15,000.00.

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