



DISCIPLINE CASE *DIGEST*

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Case 03-01 (Amended)

DONALD NEIL MACIVER
Winnipeg, Manitoba

Called to the Bar
September 4, 1958

Particulars of Charges
Professional Misconduct

- breach of duty of integrity

Date of Hearing
July 16 and August 26, 2003

Panel
C.W. Martin (Chair)
G.G. Brodsky, Q.C.
J.B. Hirsch

Disposition

- disbarment

Counsel
D. Senft for The Law Society of Manitoba
Member Unrepresented

Breach of Duty of Integrity

Facts

Mr. MacIver was convicted on February 25, 1999 in the Court of Queen's Bench of two

counts of tax evasion and one count of making a false statement, contrary to the *Income Tax Act*. He was also convicted of four counts of perjury and two counts of fabricating evidence, contrary to the *Criminal Code of Canada*.

The Court of Appeal dismissed Mr. MacIver's conviction appeal and allowed the crown's sentence appeal imposing an aggregate sentence of eight years imprisonment. Mr. MacIver's application for leave to appeal to the Supreme Court of Canada was dismissed.

Subsequently, Mr. MacIver was charged with conduct unbecoming a barrister and solicitor or professional misconduct in that he failed to discharge with integrity the duties owed to his client, the court, the profession and the public, contrary to Chapter 1 of the *Code of Professional Conduct*.

Decision and Comments

Mr. MacIver pled guilty to the count contained in the Citation and agreed that his conduct amounted to professional misconduct. The Society and Mr. MacIver made a joint submission with respect to disposition, including that Mr. MacIver be permitted to resign from the practice of law pursuant to recently enacted Subsection 72(1)(g) of *The Legal Profession Act*.

In support of the joint submission, it was noted that the member had voluntarily withdrawn from the practice of law in 1998, had received a significant criminal penalty, had pled guilty to the count contained in the Citation, and had filed medical reports attesting to his poor health. In addition, the member pointed out his earlier significant contributions to the community and relied upon numerous letters that attested to his good character.

The panel expressed concern with the joint submission as there appeared to be a strong prima facie case for disbarment. Both counsel for the Society and the member addressed the panel's concerns and stated that the protection of the public would be achieved by the panel allowing the member to resign. It was submitted that either penalty of resignation or disbarment would equally and sufficiently address concerns of general deterrence.

The panel articulated the factors to be considered by a panel when considering whether a member should be permitted to resign in lieu of disbarment.

The panel found that Mr. MacIver had been convicted of serious charges, including offences that directly address the trustworthiness and integrity of a lawyer in the execution of his duties to his clients and the court. The panel found that there was no acknowledgement of wrongdoing or repentance by the member and that the member's submission before the panel was devoid of any explanation, mitigating circumstances or remorse regarding the commission of the charges. The panel was of the view that the facts indicated a strong prima facie case for disbarment as the appropriate disposition. As to the nature of the mitigating circumstances, there was no explanation offered addressing why the offences were committed. Mr. MacIver's plea of mitigation rested upon factors that were

either incidental (age, infirmity, reputation, distinguished career) or consequential (guilty plea, financial distress, worsened health, embarrassment) to the charges and the resulting breach of the Code. Accordingly, the panel determined that this was not the "right case" for compassion and that disbarment under the circumstances was neither harsh nor excessive.

Penalty

The panel resolved that Mr. MacIver be disbarred and his name struck from the Rolls of the Law Society as a Barrister and Solicitor. There was no order of costs.

The member filed a Notice of Appeal on September 25, 2003. In March, 2004 the appeal was deemed abandoned pursuant to the Court of Appeal Rules as the member had failed to perfect his appeal.

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