



DISCIPLINE CASE *DIGEST*

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Case 03-03

ROBERT IAN HISTED

Winnipeg, Manitoba

Called to the Bar

June 20, 1991

Particulars of Charges

Professional Misconduct (3 counts)

- Failure to treat the Court with courtesy and respect
- Writing letters that were abusive, offensive and otherwise inconsistent with the proper tone of a professional communication
- Failure to return property provided under a trust condition

Date of Hearing

October 8, 2002 and June 9, 2003

Panel

A.J. Semchuk (Chair)

J.M. Chapman, Q.C.; and

J.W. Hedley

Disposition

- Acquitted of counts 1 and 2
- Convicted of count 3
- Reprimand
- Costs of \$3,000.00

Counsel

C.K. Dangerfield for The Law Society of Manitoba

Member unrepresented

Breach of Trust Condition

Facts

The member represented a client charged with a number of criminal offences. The member brought a preliminary motion seeking to have the charges stayed. Prior to that motion being heard, the Court ordered that the member's client be released on bail, subject to certain conditions. The member then sought leave to withdraw as counsel and was advised by the Court that he would be required to bring a motion seeking to do so. The Court subsequently dismissed the member's application to withdraw. The Court informed the member that once the preliminary motion was heard and determined, it would again consider the motion to withdraw but that it was "fact driven". The member replied that it was "certainly not law driven".

In a separate matter, the Law Society conducted an investigation into the conduct of the member. The Law Society wrote to the member on three occasions, each time eliciting a response from the member. In respect of those letters, the member was charged with writing letters which were abusive, offensive and otherwise inconsistent with the proper tone of a professional communication.

In another matter, the member represented a client charged with uttering threats and failing to comply with the conditions of an undertaking. The Crown forwarded particulars to the member which included the statement of the complainant. The particulars were provided under the trust condition that they be kept in the member's personal possession, that they be used solely for the purpose of case preparation, that no copies thereof be made and that they be returned directly to the Crown upon the expiration of the appeal period. The member advised the Crown that he did not accept the trust condition and that he would not return the property.

Plea

The member entered a plea of not guilty to each of the charges and a hearing was conducted.

Decision and Comments

The Committee found the member guilty of professional misconduct resulting from his failure to return the property to the Crown. In respect of the letters written by the member, the Committee held that the member's choice of words was ill advised, intemperate and short of the standard of polite discourse one might otherwise expect, but that the communications fell short of professional misconduct. In making that finding the Committee noted that an inquiry from staff of the Law Society should elicit a full and frank response from the member. In respect of the allegation that the member had failed to treat

the court with courtesy and respect, the Committee concluded that the language used by the member was again ill advised and came "dangerously close to the mark", but did not amount to professional misconduct.

Penalty

The Committee reprimanded the member and ordered that he pay costs in the amount of \$3,000.00.

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