



# DISCIPLINE CASE *DIGEST*

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## **Case 04-05**

**FRYATT, JOHN (JACK) ROBERT**  
Winnipeg, Manitoba

**Called to the Bar**  
June 29, 1989

**Particulars of Charges**  
Professional Misconduct (16 counts)

- Breach of Queen's Bench Rule 74.14(4) (charging a fee in excess of tariff) (x4)
- Breach of Rule 5-43(1)(g) (payment of a personal account from pooled trust account) (x2)
- Breach of Chapter 11 of the Code (stipulating, charging or accepting a fee that is not fully disclosed, fair and reasonable) (x3)
- Breach of Rule 5-43(1)(c) (withdrawing funds from trust for fees without sending a bill to the client at the time the funds are withdrawn) (x7)

**Date of Hearing**  
December 14, 2004

**Panel**  
J.F.R. Taylor, Q.C., Chair  
C.V. Kopynsky, Q.C.  
R.M. Kozak

**Finding**  
Guilty of all Charges

## **Disposition**

- Suspension (6 months)
- Costs of \$5,000.00

**Counsel**  
D. Senft for The Law Society of Manitoba

## **Excessive Fees**

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### **Facts**

With respect to four estate matters, Mr. Fryatt charged fees in excess of the fees that are allowable under Queen's Bench Rule 74.14(4) without obtaining either the consent of the beneficiaries to an agreed fee or Court approval in accordance with Queen's Bench Rule 74.14.

In relation to two estate matters, Mr. Fryatt paid personal accounts from monies that were being held in trust to the credit of the two estates. These charges related to three instances where Mr. Fryatt paid monies out of trust in relation to his own GST account, his Visa account and his Mastercard account. Subsequently, Mr. Fryatt deposited monies into his pooled trust account in like amounts to the credit of the estate matters.

In relation to three estate matters, Mr. Fryatt breached the rule set out in Chapter 11 of the Code of Professional Conduct in that he stipulated, charged or accepted a fee that was not fully disclosed, fair or reasonable. In one matter, Mr. Fryatt took fees in circumstances where minimal work had been performed. In another matter, he took fees when no further legal services had been rendered to the client. In another matter, he failed to fully disclose the fees that were taken.

In relation to seven estate matters, Mr. Fryatt breached Law Society Rule 5-43(1)(c) on 27 occasions in that he withdrew funds from trust for fees without sending a bill to the client at the time the funds were withdrawn.

### **Plea**

The member did not contest the charges contained in the Citation that was served upon him nor did he contest the particulars contained in a Statement of Agreed Facts that had been prepared by the Society.

### **Decision and Comments**

The Panel found the member guilty of professional misconduct.

### **Penalty**

The Panel made the order requested by the Society and agreed to by Mr. Fryatt, suspending him from the practice of law for a period of six months and requiring that he pay costs to

the Society in the amount of \$5,000.00. The Panel further ordered that upon Mr. Fryatt's resumption of practice, he must practice under the supervision of a member approved by the Society for a period of one year in relation to the execution of any trust cheques and the rendering of any Statements of Account.

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