



DISCIPLINE CASE *DIGEST*

Case 09-11 (AMENDED)

Member:	David Allan Guttman
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 26, 1986
Particulars of Charges:	Professional Misconduct (1 count) <ul style="list-style-type: none">▪ Breach of Integrity (Chapter 1 of the <i>Code of Professional Conduct</i>) [fabricating a Statement of Account and a letter falsely representing the legal fees, disbursements and costs incurred by his client in order to reduce the client's liability for an Employment Insurance overpayment]
Date of Hearing:	July 23, 2009
Panel:	<ul style="list-style-type: none">▪ Ellen P. Leibl, Q.C. (Chair)▪ Peter J. Cole, Q.C.▪ William R. Johnston
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ David G. Hill for the Member
Plea:	Guilty (contested penalty)
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$3,931.98
Appeal:	The panel's decision to disbar the member was overturned by the Manitoba Court of Appeal on June 15, 2010 and a one year suspension from practice was substituted.

Breach of Integrity

Facts

The member was retained by a client with respect to a potential wrongful dismissal claim. Negotiations ensued with counsel for the client's former employer, and ultimately there was a settlement of the issues whereby the client would receive a specified sum from the former employer. Counsel for the former employer sent the settlement proceeds to the member in trust that he determine the amount of any Employment Insurance reimbursement obligation and satisfy it out of the funds. He was also to provide a receipted account for legal fees in the amount of \$6,000.00 (inclusive of disbursements and taxes) marked paid in full. The member instructed his assistant to prepare a "fake bill" setting out legal fees in the amount of \$5,250.00, plus

disbursements and taxes, which was forwarded to counsel opposite in satisfaction of the trust condition, a copy of which was provided to the client and marked as a "sample bill." The member then reported the settlement to Human Resources and Skills Development Canada ("HRSDC") and referenced a \$5,000.00 contribution to his client's fees and disbursements by the former employer. HRSDC advised that the amount of money the client received in outstanding wages had created an overpayment of \$5,782.00 of Employment Insurance benefits and requested payment of that amount. The member responded by sending a letter to HRSDC in which he referenced an "actual" statement of account for legal fees in relation to the matter and noted that the said account had been marked "paid in full." He enclosed a fabricated Statement of Account which falsely represented that the client was charged and had paid legal fees, disbursements and costs totalling \$10,795.34. In fact, the account in question had not been sent to the client, and the account had not been paid. Accordingly Human Resources revised its Employment Insurance overpayment calculation and requested payment of \$3,514.00 in substitution of its earlier request.

The member had another Statement of Account prepared reflecting legal fees in the amount of \$4,000.00 plus taxes and disbursements which was paid by way of a trust transfer from the settlement funds. A copy of the invoice was forwarded to the client.

Plea

The member entered a plea of guilty. The issue of penalty was contested.

Decision and Comments

The panel found Mr. Guttman guilty of professional misconduct based on his admission to the charge.

Penalty

The member sought a 45-60 day suspension. The Society requested that the member be disbarred. The Panel concluded that absent compelling extenuating circumstances, disbarment was appropriate and necessary. The Panel was not persuaded that the significant stresses in Mr. Guttman's life in 2008 were the cause of his actions. The Panel also made note of his significant discipline history. Mr. Guttman had received a caution, and had been convicted for serious breaches of integrity on two occasions in 1990 and in 1992. In one instance, he was suspended from practice for 2 months, and in the other, he was suspended for 6 months followed by 2 years of supervision, and was required to continue with psychiatric treatment. The Panel ordered that Mr. Guttman pay costs of the investigation and prosecution in the amount of \$3,931.98.

Appeal

The member filed an appeal to the Manitoba Court of Appeal from the Panel's decision with respect to sentence. An Application for a Stay of the Panel's Order was consented to by the Law Society pending the hearing of the appeal. The appeal was allowed on June 15, 2010 and a penalty of a one year suspension from practice was substituted. The reasons for decision of the Manitoba Court of Appeal are reported at *Guttman v. Law Society of Manitoba*, 2010 MBCA 66 (CanLII).