



# DISCIPLINE CASE *DIGEST*

Case 09-13

- Member:** Dennis Michael Troniak
- Jurisdiction:** Winnipeg, Manitoba
- Called to the Bar:** June 30, 1977
- Particulars of Charges:** Professional Misconduct (4 counts)
- Breaching Chapter 2 of the *Code of Professional Conduct* [quality of service]
  - Breaching Chapter 1 of the *Code of Professional Conduct* [failing to act with integrity – misleading various parties]
  - Breaching Chapter 3 of the *Code of Professional Conduct* [failing to be honest and candid with clients]
  - Breaching Chapters 9 and 13 of the *Code of Professional Conduct* [failing to treat tribunal with courtesy and respect and failing to encourage public respect for the administration of justice]
- Hearing Dates:**
- January 12, 2009 (Preliminary Motion)
  - January 19, 2009
  - September 14, 2009
- Panel:**
- Bjorn Christianson, Q.C. (Chair)
  - Garth Smorang, Q.C.
  - Roger King, Q.C.
- Counsel:**
- Rocky Kravetsky for The Law Society of Manitoba
  - Saul Simmonds for the Member
- Plea:** Guilty
- Disposition:**
1. 12 mo. suspension (commencing November 1, 2009)
  2. Costs of \$18,500.00
  3. Conditions regarding his return to practice at the conclusion of his suspension:
    - (a) That he shall practice under the supervision of a lawyer approved by the Law Society, which supervisor shall at least once per month:
      - (i) meet with Mr. Troniak to review all open files;
      - (ii) require Mr. Troniak to report as to the status and progress of his open files;
      - (iii) review all contingent fee contracts into which Mr. Troniak has entered;
      - (iv) review all bills issued by Mr. Troniak; and

- (v) provide quarterly written reports to the Law Society concerning the review and supervision of Mr. Troniak's practice.
  - (b) That he shall not act for a group of clients in the same matter or cause on the instruction of a representative or representatives, except if the matter is a properly constituted class action under legislation applicable to such actions;
  - (c) That he shall not act in any matter arising from the matter which was the subject of these proceedings.
4. He may, after 5 years from the date he resumes practice, apply for removal or amendment of the condition that he practice under supervision.

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## Failure to Serve / Breach of Integrity

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### Facts

From 1993 to 1996, Mr. Troniak represented or purported to represent approximately 407 persons who were alleged to be displaced residents of a northern Manitoba community in respect of claims made under the Northern Flood Agreement (the "NFA").

In respect of Mr. Troniak's representation of the displaced persons, he failed to take full, proper and necessary instructions from them, he failed to communicate directly with each of the persons sufficiently, he failed to advise each of them in a timely fashion or at all of the merits of their claim and he filed documents with the arbitrator appointed under the NFA which did not contain sufficient information for the claims to be prosecuted and he failed to prosecute each of the claims of the displaced persons in a timely fashion. He therefore breached his duty to serve each client in a conscientious, diligent and efficient manner, contrary to Chapter 2 of the *Code of Professional Conduct*.

While acting, or purporting to act for the displaced persons, Mr. Troniak asserted in correspondence to a law firm and to some of the displaced persons that he was not involved in the preparation of a certain questionnaire when in fact, that was not the case, indicated that he had objected to the use of the questionnaire when that was not the case, and failed to correct the misinformation when drawn to his attention.

Following an award by the arbitrator under the NFA in 2005, Mr. Troniak failed to advise the displaced persons of the award, failed to advise that the award had allowed Mr. Troniak less than \$3,000.00 out of a disputed claim for \$184,277.50 in fees and disbursements, stated that motions were pending before the arbitrator to advance claims of the displaced persons when that was not the case, and stated that the arbitrator was waiting for a certain mediation report before proceeding with the motions when that was not the case.

In 2001, Mr. Troniak entered into a contingency agreement with clients wherein the clients agreed to pay 25% of compensation recovered, when Mr. Troniak had, in 2000, entered into an agreement with opposing parties in which he had agreed that he would not be entitled to contingency fees.

In each of these respects, Mr. Troniak breached his duty of integrity, contrary to Chapter 1 of the *Code of Professional Conduct*.

While acting or purporting to act for the displaced persons, Mr. Troniak published a circular to the displaced persons in which he failed to advise of the award by the arbitrator, failed to advise that the arbitrator had allowed less than \$3,000.00 out of the disputed claim for \$184,277.50, stated that motions were pending before the arbitrator when no such motions were pending, and stated that the arbitrator was waiting for a certain mediation report before proceeding, when that was not the case. In each of these respects, Mr. Troniak breached his duty to be honest and candid when advising clients, pursuant to Chapter 3 of the *Code of Professional Conduct*.

While acting or purporting to act for the displaced persons, Mr. Troniak published a circular to the displaced persons in which he questioned whether the arbitrator would allow the claims to proceed on a fair and equitable basis, and filed an affidavit to which was exhibited a document containing statements attacking the integrity and impartiality of the arbitrator and misrepresenting rulings made by her. In each respect Mr. Troniak breached his duty to treat the tribunal with courtesy and respect, contrary to Chapter 9 of the *Code of Professional Conduct* and his duty to encourage public respect for the administration of justice pursuant to Chapter 13 of the *Code of Professional Conduct*.

### **Preliminary Motions**

Mr. Troniak brought a preliminary motion requesting that the panel members be disqualified, alleging a reasonable apprehension of bias. The motion was dismissed.

### **Plea**

Mr. Troniak pled guilty to the charges of professional misconduct as outlined above.

### **Decision**

The panel found Mr. Troniak guilty of professional misconduct based on his admission to the charges.

### **Penalty**

The panel accepted a joint recommendation made by the Society and counsel for Mr. Troniak and ordered that he be suspended for a period of 12 months commencing November 1, 2009. The panel ordered that at the conclusion of the suspension, any practising certificate issued to Mr. Troniak is subject to the following conditions:

- (a) That he shall practice under the supervision of a lawyer approved by the Law Society, which supervisor shall at least once per month:
  - (i) meet with Mr. Troniak to review all open files;
  - (ii) require Mr. Troniak to report as to the status and progress of his open files;
  - (iii) review all contingent fee contracts into which Mr. Troniak has entered;
  - (iv) review all bills issued by Mr. Troniak; and
  - (v) provide quarterly written reports to the Law Society concerning the review and supervision of Mr. Troniak's practice.
  
- (d) That he shall not act for a group of clients in the same matter or cause on the instruction of a representative or representatives, except if the matter is a properly constituted class action under legislation applicable to such actions;

(e) That he shall not act in any matter arising from the matter which was the subject of these proceedings.

The panel also ordered that Mr. Troniak may, after 5 years from the date he resumes practice, apply for removal or amendment of the condition that he practice under supervision.

Mr. Troniak was ordered to pay the sum of \$18,500.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of the matter.

The panel noted that the charges faced by Mr. Troniak were similar to those faced by him in the past, and reflected a lack of integrity. Had it not been for the joint recommendation, the panel would have considered the more serious penalty of disbarment.