



# DISCIPLINE CASE *DIGEST*

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Case 10-06

<b>Member:</b>	Frank Louis Cvitkovitch, Q.C.
<b>Jurisdiction:</b>	Winnipeg, Manitoba
<b>Called to the Bar:</b>	September 13, 1961
<b>Particulars of Charges:</b>	Professional Misconduct (4 counts) <ul style="list-style-type: none"><li>▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> (“the Code”) [integrity] – requesting that a charitable receipt for an Estate be reissued in the member’s name, personally</li><li>▪ Failing to respond to the Law Society</li><li>▪ Breach of trust accounting rules relating to specific trust investment account</li><li>▪ Breach of Chapter 11 of the Code [excessive fees]</li></ul>
<b>Plea:</b>	Guilty
<b>Date of Hearing:</b>	June 16, 2010
<b>Panel:</b>	<ul style="list-style-type: none"><li>▪ Barney Christianson, Q.C. (Chair)</li><li>▪ Patricia Fraser</li><li>▪ Brian Pauls</li></ul>
<b>Counsel:</b>	<ul style="list-style-type: none"><li>▪ Darcia Senft for The Law Society of Manitoba</li><li>▪ Michael Radcliff, Q.C. for the Member</li></ul>
<b>Disposition:</b>	<ul style="list-style-type: none"><li>▪ Fine in the amount of \$5,000.00</li><li>▪ Costs of \$6,414.52</li></ul>

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## Breach of Integrity and Excessive Fees

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### Facts

Mr. Cvitkovitch began acting as the executor and solicitor for an estate. While doing so he made an interim distribution to some charities that were the residual beneficiaries and donation receipts were issued to and claimed by the estate. In April, 2003, Mr. Cvitkovitch returned to one of the residual beneficiaries a charitable receipt that had been made out in favour of the estate, advising that it was of no use to the estate and requesting that it be reissued in his own name, as executor. The Society initiated an investigation into his conduct and during the investigation, Mr. Cvitkovitch was asked some questions about his request for a new charitable receipt. He was specifically asked whether he claimed the charitable receipt with respect to his personal income tax returns, and if so, in which years. Although Mr. Cvitkovitch responded to the Society, he

failed to provide a written response that was responsive to the substance of the Society's inquiries. Ultimately, Mr. Cvikovitch acknowledged that he had received the reissued charitable receipt and used it in the preparation of his tax returns. As a result, he obtained a substantial tax benefit. Specifically, in 2003 he received a tax benefit of approximately \$10,000.00 and in 2004 he received a tax benefit of approximately \$14,000.00.

Mr. Cvitkovitch disclosed his use of the reissued receipt to Canada Revenue Agency on a voluntary basis and requested a reassessment which resulted in a requirement that he pay the CRA approximately \$24,000.00. As well, he was required to pay interest of approximately \$4,000.00. Such amounts were paid to CRA.

With respect to another estate, Mr. Cvitkovitch filed an Affidavit of Revised Inventory which described assets of the estate amounting to approximately \$628,000.00. Pursuant to Queens Bench Rule 74.14(4) ('the tariff'), and Form 74AA, the fees payable to a lawyer on the estate would be \$4,100.00 based on the first \$300,000.00 of value. Additional fees may be taken with the consent of the residual beneficiaries or with the approval of the court.

Within 7 months of probate being granted, Mr. Cvitkovitch had rendered two statements of accounts totalling approximately \$2,400.00. Following discussions with the client in December, 2004, he transferred estate assets in the amount of \$400,000.00 into a specific trust investment account that he had opened in the name of his firm, in trust for his firm and not in trust for the estate or for the client on behalf of the estate. It was intended that the investment interest generated by such funds would accrue to the benefit of Mr. Cvikovitch's firm and would be utilized towards his fees. In or about June, 2005, he prepared and sent out a release to the residual beneficiaries wherein he described his fees as amounting to approximately \$7,400.00 and described additional fees of \$11,500.00 for "administration services" for a total of approximately \$19,000.00. Ultimately, he received executed releases from the residual beneficiaries. Subsequently, he received interest income amounting to approximately \$11,000.00. In March, 2006, he took a further sum of approximately \$3,500.00 on account of fees and a smaller sum shortly thereafter. The total amount of money that he ultimately took for his fees amounted to approximately \$22,000.00. However, Mr. Cvitkovich did not obtain either the consent of the residual beneficiaries or court approval in respect of fees taken in the amount of approximately \$3,100.00 which sum represented the difference between the total fees set out in the release and the total amount of fees actually taken by him.

### **Plea**

Mr. Cvitkovitch entered a plea of guilty to four counts of Professional Misconduct.

### **Decision and Comments**

The panel set out that the facts, as presented, seemed to indicate that perhaps there was no overt fraudulent intent on the part of Mr. Cvitkovitch but they further noted that his actions were clearly inappropriate. The panel commented "there are no cases where there are no victims". Noting that the member had no prior record, the panel was prepared to accept the joint submission on penalty.

### **Penalty**

Mr. Cvitkovitch was ordered to pay a fine of \$5,000.00 and costs in the amount of \$6,414.52 towards the investigation and prosecution of this matter.