



DISCIPLINE CASE *DIGEST*

Case 10-14

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 Chapters 1 and 9 of the <i>Code of Professional Conduct</i> [integrity and duty to treat tribunal with courtesy and respect – failing to disclose material facts to the Court and filing an Affidavit that was misleading]
Plea:	Guilty
Date of Hearing:	March 9, 2011
Panel:	<ul style="list-style-type: none">▪ Donald R. Knight, Q.C. (Chair)▪ Keith LaBossiere▪ Suzanne Hrynyk (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Paul Jensen for The Law Society of Manitoba▪ Z. Ian Garber for the Member
Disposition:	<ul style="list-style-type: none">▪ Suspension from the practice of law for a period of 30 days, commencing July 9, 2011 and ending August 9, 2011▪ Costs of \$3,000.00

Breach of Integrity / Failure to Treat Tribunal with Courtesy and Respect

Facts

In November, 2008, Mr. Guttman was retained to act for B.B. and E.M. who were two of three individuals charged with conspiracy to commit murder. The third individual charged was R.D.

The Crown took the position that Mr. Guttman was in a conflict position and could not act for either accused on the basis that a lawyer cannot represent two people charged with a conspiracy. At this time, the Crown was unaware that Mr. Guttman had previously represented B.B. and R.D. in 2003 and in 2006 respectively.

Mr. Guttman wrote to the Law Society seeking an opinion as to whether or not he was in a conflict position. However, there was no disclosure in the letter to the Law Society that Mr. Guttman had acted for B.B. and for R.D. in 2003 and 2006.

Mr. Guttman referred B.B. to new counsel but took the position that there was no conflict with respect to his continued representation of E.M.

The Crown brought a motion for Mr. Guttman's recusal based upon conflict of interest. Mr. Guttman swore an Affidavit and his counsel filed a Motions Brief in response to the Crown's motion. In his Affidavit, Mr. Guttman emphasized the briefness of his representation of B.B., took the position that there was no actual conflict or future potential conflict and tendered in evidence an opinion from the Law Society that he was not in conflict by virtue of the nature of the charges.

The Affidavit did not disclose Mr. Guttman's previous representation of B.B. and R.D. in 2003 and 2006 respectively. Mr. Guttman knew or ought to have known that this information should have been disclosed to the Court as it was relevant for the purpose of determining whether he was in a conflict of interest vis-à-vis his continued representation of E.M. Accordingly, the Affidavit was materially misleading.

Crown Counsel determined that Mr. Guttman had represented B.B. and R.D. in the past and brought this information to the Court's attention.

Plea

Mr. Guttman entered a plea of guilty to 1 count of professional misconduct.

Decision and Comments

The panel found Mr. Guttman guilty of the charge in the Citation based on his admissions of guilt. They determined that Mr. Guttman caused an Affidavit to be filed in the Court of Queen's Bench which was misleading to the Court because it omitted important facts that he knew or ought to have known at the time he swore the Affidavit. The panel took note of the fact that Mr. Guttman appeared before the panel having been suspended from the practise of law as outlined in a decision of the Manitoba Court of Appeal dated June 15, 2010 and that his current suspension would terminate on July 9, 2011. After hearing representations from counsel, the panel concluded that had this matter been dealt with at the same time as the other discipline matters in the Court of Appeal, the penalty imposed by the Court of Appeal would not have been significantly different. The panel was of the view that the current charge was nonetheless a serious charge which was deserving of a significant penalty.

Penalty

The panel accepted the joint recommendation made by counsel for the Law Society and for Mr. Guttman and ordered that Mr. Guttman be suspended for a period of 30 days commencing July 9, 2011 and ending on August 9, 2011. The panel further ordered that Mr. Guttman be required to pay costs in the amount of \$3,000.00 as a contribution towards the costs associated with the investigation and prosecution of this matter.