



DISCIPLINE CASE *DIGEST*

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Case 94-09

JAMES MICHAEL DAVID BOMEK
Flin Flon, Manitoba

Called to the Bar
June 26, 1986

Particulars of Charges
Professional Misconduct (2 counts)

- breach of duty to avoid conflict of interest
- breach of duties of candour, courtesy and good faith

Date of Hearing
July 22, 1994

Panel
Douglas Yard, Q.C. (Chairperson)
Donald Little, Q.C.
Heather Leonoff

Disposition

- \$3,000.00 fine
- \$500.00 costs

Counsel
R. B. McNicol, Q.C. for The Law Society of Manitoba
Eleanor Dawson, Q.C. for the Member

Conflict of Interest

Facts

Mr. Bomek, who was called to the Bar on June 26, 1986, appeared before the Discipline Committee on July 22, 1994.

In November, 1991, Mr. Bomek was retained by the City of Flin Flon to pursue a claim for monies allegedly owed to the City by Mr. and Mrs. D. Mr. Bomek did not take any steps to pursue the claim.

Thereafter, the City of Flin Flon hired in-house counsel and that counsel took steps to pursue the claim.

Mr. and Mrs. D. then attempted to retain Mr. Bomek to act on their behalf in regard to that claim. Counsel for the City of Flin Flon asserted that Mr. Bomek had a conflict and could not act. Mr. Bomek agreed that he would not act. Thereafter, Mr. Bomek prepared a Statement of Defence for Mr. and Mrs. D. which they filed on their own behalf.

Counsel for the City of Flin Flon learned that Mr. Bomek had prepared the Statement of Defence filed by Mr. and Mrs. D. and wrote to Mr. Bomek asserting that this was a breach of Mr. Bomek's earlier assurance that he would not act for Mr. and Mrs. D.

Mr. Bomek replied to counsel for the City of Flin Flon denying that he had prepared the Statement of Defence for Mr. and Mrs. D. (when in fact he had) and demanding an apology, failing which he would take further action against counsel for the City of Flin Flon. Mr. Bomek's reply was hand delivered to the Secretary-Treasurer of the City of Flin Flon.

Comments of the Discipline Committee

Mr. Bomek pleaded guilty to both counts in the Citation.

The Committee found that Mr. Bomek had put himself in an obvious position of conflict and that he should have recognized it to be such at the time.

The Committee also concluded that there were elements of dishonesty, lack of candour, and bullying in Mr. Bomek's response to the complaint made to him by counsel for the City of Flin Flon. While Mr. Bomek subsequently apologized, that apology did not occur until after a written complaint had been made to the Society.

As Mr. Bomek has a previous record with the Society, the Committee concluded that he was entitled to no leniency in the circumstances. However, having regard to Mr. Bomek's financial circumstances, the Committee imposed fines which were lower than might otherwise have been levied.

Findings and Penalties

The Committee fined Mr. Bomek \$1,500.00 on each count in the Citation and assessed costs at \$500.00. The total amount of \$3,500.00 is to be paid in full on or before March 31, 1995.

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