



DISCIPLINE CASE *DIGEST*

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Case 94-17

VICTOR BRIAN OLSON
Winnipeg, Manitoba

Called to the Bar
June 24, 1982

Particulars of Charges
Professional misconduct (5 counts)

- breaches of the accounting rules

Date of Hearing
July 13 & 14, 1993 and November 25, 1993

Panel
Douglas Ward (Chairperson)
Grant Mitchell
Lewis Wasel

Disposition

- reprimand
- \$750.00 costs

Counsel
Regina Novek for the Law Society
Daniel Dutchin for the Law Society on Appeal
Sidney Green, Q.C. for the member

Breach of Accounting Rules

Facts

Mr. Olson, who was called to the Bar on June 24, 1982, appeared before the Discipline Committee on July 13 and 14, 1993.

With respect to four clients in three separate matters. Mr. Olson failed to send bills for his fees and disbursements to his clients at or before the time he withdrew monies from his trust bank account to pay for the said fees and disbursements thereby breaching Rule 129(c) of *The Rules of The Law Society of Manitoba*.

Mr. Olson acted for both parties to a real estate transaction and failed to keep and maintain a separate trust ledger for each of them thereby breaching Rule 128(2)(b) of *The Rules of The Law Society of Manitoba*.

Mr. Olson also paid out of his trust bank account on behalf of a client a sum greater than the client had to his credit in the said account thereby breaching Rule 129(f) of *The Rules of The Law Society of Manitoba*.

The matters considered by the Discipline Committee were discovered through routine audit by the Law Society staff.

Comments of the Discipline Committee

The Committee noted that although Mr. Olson did not make an admission to any of the above noted charges, he did not dispute the facts in four of them.

Findings and Penalties

The Discipline Committee found Mr. Olson guilty of professional misconduct. The Discipline Committee considered Rule 138, formerly Rule 69, and determined that the clear and unequivocal meaning of either Rule is that the breach of even one of the Rules Respecting Accounts will be and will be deemed to be professional misconduct. The Committee also determined that even if Rule 138 and the former Rule 69 had not been promulgated, they would still have found Mr. Olson guilty of professional misconduct because it appeared clear that Mr. Olson had engaged in a pattern of conduct which, if not controlled or curtailed, could cause harm to his present and future clients. The Committee did not believe the breaches to be accidental.

The Committee noted that Mr. Olson had not previously been found guilty of professional misconduct for any other breaches of the Rules with the exception of a formal caution which he accepted on January 25, 1991 for breaches of the Rules Respecting Accounts. The Committee further noted that Mr. Olson is no longer practising law.

The Judicial Committee ordered that Mr. Olson be reprimanded and further ordered that he pay to The Law Society of Manitoba costs of \$750.00, all inclusive, to be paid in full on or

before January 31, 1994.

Note

The finding of the Discipline Committee was appealed to the Manitoba Court of Appeal. The appeal was heard on November 1, 1994 and was dismissed with costs.

The appeal was brought by Mr. Olson on the basis that the Discipline Committee had erred in concluding that it had no choice but to find the member guilty of professional misconduct for breach of the rules because of the wording of the Law Society Rule 69 (the predecessor to current Rule 138). That Rule states that a breach of the Rules Respecting Accounts will be deemed to be professional misconduct.

The Court of Appeal found that there was evidence to support the Committee's findings that the breaches in question were not inadvertent. They determined that their findings were clearly within the purview of the Committee to make and interference by the Court was not warranted.

A number of other issues were raised by the Appellant, however only one other matter was commented upon by the Court. The appellant asserted that because three of eight particulars were found not to have been proven, the entire Citation for professional misconduct must fail. The Court of Appeal found the submission to be without merit. The Court of Appeal stated "the task before the Committee consistent with the citation itself was to determine in the end, based on the individual particulars found to have been proven whether the Appellant had committed professional misconduct. This the Committee did."

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