



DISCIPLINE CASE *DIGEST*

[Discipline Case Digest Index](#) ❖ [Law Society Home Page](#)

Case 95-06

ROBERT JOHN DOUGLAS McROBERTS
Winnipeg, Manitoba

Called to the Bar
June 29, 1978

Particulars of Charges
Professional Misconduct (1 count)

- breach of trust condition

Date of Hearing
March 21, 1995

Panel
David Frayer, Q.C. (Chairperson)
Barbara Hamilton, Q.C.
Heather Leonoff, Q.C.

Disposition

- reprimand
- costs of \$500.00

Counsel
D. Dutchin for the Law Society
G. Sinnock for the Member

Breach of Trust Condition

Facts

Mr. McRoberts, who was called to the Bar on June 29, 1978, appeared before the Discipline Committee on March 21, 1995.

A client retained the services of the McRoberts Law Office with respect to an accident claim in Saskatchewan and requested that his file be transferred to the McRoberts firm from the lawyer previously retained in Saskatchewan. The file was transferred to an associate of Mr. McRoberts under a trust condition that written instructions be obtained from the client that the previous lawyer be paid his fees in the event of recovery at trial or settlement. The trust condition was accepted by Mr. McRoberts' associate and continued in effect when Mr. McRoberts assumed conduct of the file.

The trust condition was not complied with in that the client did not provide the requested written instructions. The materials in the file were used to settle the action and proceeds of settlement were received, but the previous lawyer was not paid.

Mr. McRoberts acknowledged both his responsibility for non-compliance with the trust condition and that his associate should not have accepted the trust condition in the first place.

Mr. McRoberts did explain, however, that he believed the Saskatchewan lawyer was negligent in the handling of the file and believed that the lawyer was not entitled to payment of fees as a result. Further discussions occurred between Mr. McRoberts and the Saskatchewan lawyer, who then received the amount of his fees subject to a condition that the funds be held in trust until determination of a negligence claim.

The Committee concurred with the position of the Law Society that trust conditions are important and must be complied with by members.

Comments of the Discipline Committee

The Committee took note of the fact that the matter had been resolved between the Saskatchewan lawyer and Mr. McRoberts by an amended trust condition.

Findings and Penalties

The Committee imposed a reprimand and costs of \$500.00.

[Top of page](#)

[Index](#)