



# DISCIPLINE CASE *DIGEST*

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## **Case 95-09 (Amended)**

**EVA DRAGUN**  
Winnipeg, Manitoba

**Called to the Bar**  
June 20, 1991

**Particulars of Charges**  
Professional Misconduct (1 count)

- misleading the Law Society

**Date of Hearing**  
May 2, 1995

**Panel**  
David Frayer, Q.C. (Chairperson)  
Alexandra Morton, Q.C.  
Reeh Taylor, Q.C.

### **Disposition**

- fine of \$500.00
- costs of \$500.00

**Counsel**  
Daniel Dutchin for the Law Society  
Eleanor Dawson, Q.C. for the Member

**Date of Appeal**  
November 7, 1995

### **Disposition**

- appeal dismissed
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## Misleading the Law Society

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### Facts

Ms. Dragun, who was called to the Bar on June 20, 1991, appeared before the Discipline Committee on May 2, 1995.

The Law Society of Manitoba received a letter of complaint from a lawyer who alleged that Ms. Dragun, a former associate of that lawyer, had included in a bill rendered to a client, certain disbursements that had been incurred on behalf of the client while Ms. Dragun and the other lawyer were practising together. Those disbursements were paid out of the general account of the complaining lawyer. The disbursements in question covered fees for filing a Notice of Application and a Statement of Claim, plus an amount for service of those documents and for the provision of medical reports. The bill had been paid by the client and Ms. Dragun retained the full amount of the proceeds until after the complaint was filed with the Law Society.

In her response to the complaint, Ms. Dragun advised that the billings to the client from her office had been prepared by her secretary who based the billings on disbursements paid out by her office and not by her former firm.

In her testimony before the Discipline Committee, Ms. Dragun acknowledged that although her secretary had prepared the list of disbursements, she had looked at the list and signed it without making an attempt to check its accuracy. Ms. Dragun also acknowledged that she received earlier correspondence from the other lawyer seeking payment of the disbursements but had failed to respond to that correspondence. Ms. Dragun also acknowledged that even after receiving the Law Society's letter, she failed to check her file because she continued to believe that the disbursements had been incurred by her.

### Comments of the Discipline Committee

Counsel for Ms. Dragun urged the Committee to accept that Ms. Dragun's conduct was inadvertent. The Committee, however, did not accept that position and found that Ms. Dragun either knew, ought to have known or recklessly disregarded her simple duty and ability to determine from her own file that the disbursements in question were incurred at her former office. This information had previously been drawn to the attention of Ms. Dragun and she had chosen to ignore it.

The Committee was satisfied that by her own admission, Ms. Dragun had caused the Notice of Application and Statement of Claim to be filed while she was in association with the other lawyer. Therefore, she had to have known that at least some of the disbursements were attributable to her former law office.

## **Findings and Penalties**

The Committee found Ms. Dragun guilty of professional misconduct. The Committee expressed the view that The Law Society of Manitoba was entitled to expect a careful and reasoned response to its inquiries and as a result viewed Ms. Dragun's conduct in this matter as serious and meriting more than a reprimand. The Committee determined that the appropriate disposition was a fine of \$500.00 and also ordered that costs be paid in the amount of \$500.00.

## **Note**

Ms. Dragun filed an appeal from her conviction to the Manitoba Court of Appeal on June 30, 1995. The appeal was heard on November 7, 1995 and was dismissed. The appeal was brought by Ms. Dragun on the following grounds:

- a. the Discipline Committee erred in law in finding her guilty of professional misconduct in that the finding was not supported by cogent and convincing evidence to the standard of proof required at law to found a conviction;
- b. the Discipline Committee erred in law in failing to give proper effect to the uncontradicted reasonable explanation given by her under oath;
- c. the Discipline Committee failed to consider and to take into account that mere negligence was not sufficient to found a conviction; and
- d. the Discipline Committee erred in law in accepting that it was sufficient to convict where Ms. Dragun was found to have recklessly disregarded her simple duty and ability to determine from her own file the truth of the matter.

The Court of Appeal stated that from the conclusion reached by the Discipline Committee and from other comments made by the Committee in its reasons, the Committee doubted the veracity of the explanation offered by Ms. Dragun. The Court of Appeal determined, however, that the Discipline Committee did not make any specific findings that the appellant had intentionally lied in order to mislead the Complaints Investigation Committee but that the Discipline Committee reached its conclusion on a broader and more general basis in that it found that Ms. Dragun "either knew or ought to have known that her reply was incorrect or that she recklessly disregarded her duty to determine that it was in fact correct".

The Court of Appeal stated "the Discipline Committee rejected counsel's explanation of the appellants' conduct. It found that it was the appellant's recklessness that misled the Complaints Investigation Committee and that such recklessness in the circumstances of this case was sufficiently culpable to justify the finding that she was guilty of professional misconduct".

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