



DISCIPLINE CASE *DIGEST*

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Case 95-20

BRENT CHRISTOPHER ANTHONY KANESKI
Winnipeg, Manitoba

Called to the Bar
June 24, 1993

Particulars of Charges
Professional Misconduct (27 counts)

- failure to deposit client funds into trust account (10x)
- payment of fees without permission (16x)
- misleading client

Date of Hearing
September 5, 1995

Panel
Douglas Yard, Q.C. (Chair person)
David Frayer, Q.C.
Alexandra Morton, Q.C.

Disposition

- suspension for three months
- costs of \$1,000.00
- conditions imposed on practising certificate

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

Failure to Deposit Client Funds Into Trust Account

Facts

Mr. Kaneski, who was called to the Bar on June 24, 1993, appeared before the Discipline Committee on September 5, 1995.

On ten occasions Mr. Kaneski received monies from his clients on behalf of fees, but failed to deposit those monies into the trust bank account of the firm where he practised and failed to account to his firm for these fees. The fees were appropriate for the work being performed on behalf of the clients.

On sixteen client files, Mr. Kaneski withdrew monies from the firm's trust bank account for the recovery of fees and disbursements without a bill for such fees and disbursements being prepared and sent to his clients at the time the monies were withdrawn. In each of these cases, however, the fees and disbursements were determined to be appropriate.

While representing a client on a personal injury claim, he misled the client by advising her that he had received an offer to settle from the insurers for the defendant in the amount of \$5,000.00, when in fact the offer was received in the amount of \$7,000.00. It was determined that Mr. Kaneski misled the client in order to ensure that she would be agreeable to the final settlement that was arranged through negotiation. The file was completed to the satisfaction of the client but the client was not aware that she had been misled.

Comments of the Discipline Committee

Mr. Kaneski admitted all 27 counts in the Citation.

The Committee determined that there was clearly an appropriation of monies by Mr. Kaneski for his own purposes. The funds appropriated by Mr. Kaneski were either funds of the client or funds of the law firm, but in all cases, it was determined that Mr. Kaneski's firm was deprived of the benefit of those funds, where the efforts and resources of the firm had been utilized to earn those funds. The Committee determined that Mr. Kaneski had breached his fiduciary duty to his law firm.

The Committee determined that with respect to the ten counts where monies were not deposited to the firm's trust account, the course of conduct was over a period of ten months and the total amount of monies received by Mr. Kaneski was in excess of \$4,000.00.

The Committee also noted that there were sixteen counts where Mr. Kaneski breached the *Rules of The Law Society of Manitoba* by withdrawing monies for fees and disbursements from the firm's trust account without rendering bills to the clients at the time the monies were withdrawn. Although Mr. Kaneski had explained that he was too busy to complete this task, the Committee noted that this requirement was part of a lawyer's duties and determined that Mr. Kaneski's failure to comply with the Rules was evidence of his lack of

competence.

The Committee also noted that Mr. Kaneski's misleading a client was a serious matter and that the client had been manipulated by Mr. Kaneski in order to have her agree to the results of the negotiations. The Committee commented that lawyers do not have the right to appropriate client decisions unto themselves.

The Committee stated that the charges against Mr. Kaneski went directly to the issue of integrity, which was central to the issue of the practice of law.

Findings and Penalties

The Committee found that Mr. Kaneski was guilty of professional misconduct on the basis of his admission to the charges.

The Committee suspended Mr. Kaneski for a period of three months, after which time he would be entitled to a new practising certificate, which would be subject to conditions for a period of eighteen months. The conditions would include Mr. Kaneski practising law as in-house counsel, not having signing authority on a trust account, nor receiving or holding monies or property in trust for any person, not accepting or providing legal services outside the scope of his employment, providing a report from his psychiatrist and meeting with a mentor on a regular basis for a period of twelve months.

The Committee also ordered that costs be paid in the amount of \$1,000.00.

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