



DISCIPLINE CASE *DIGEST*

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Case 96-08

DENNIS MICHAEL TRONIAK
Winnipeg, Manitoba

Called to the Bar
June 30, 1977

Particulars of Charges
Professional Misconduct (5 counts)

- Payment of fees without permission
- Excessive fees (x2)
- Misleading public authorities
- Breach of Undertaking towards lawyer

Date of Hearing
February 28, 1996

Panel
Douglas Yard, Q.C. (Chair)
Douglas Abra, Q.C.
Ronald Toews

Disposition

- 60 day suspension
- Costs of \$2,200.00

Counsel
Daniel Dutchin for the Law Society
John Scurfield, Q.C. for the member

Improper Fees

Facts

Mr. Troniak, a Barrister and Solicitor, called to the Bar of Manitoba on June 30th, 1977, appeared before the Discipline Committee on February 28th, 1996, at which time he entered guilty pleas to 5 counts of professional misconduct.

The misconduct related to two separate client files. On the first matter, Mr. Troniak represented client F on a personal injury claim. Client F retained Mr. Troniak on a contingency fee basis. Upon settlement of the injury claim, Mr. Troniak transferred funds from his trust account to his general account for the recovery of his fees and disbursements, prior to rendering a statement of account to the client. This was in breach of Law Society Rule 129(1)(c).

Mr. Troniak also transferred fees from his trust account to his general account in an amount greater than that contemplated by the contingency agreement.

As a result of the complainant's concerns relating to Mr. Troniak's fees, an arbitration hearing was held. An Order was made by the Arbitration Panel directing Mr. Troniak to refund a portion of the fees to client F.

On this particular file, it was noted that client F was a recipient of Income Security (Social Assistance). As a result, pursuant to the obligations set forward by the Department of Income Security, client F had a duty and obligation to inform Income Security of any settlement proceeds received. Mr. Troniak, in an effort to have client F benefit from the receipt of the settlement proceeds, attempted to mislead Income Security as to the quantum of settlement received by client F. In the attempt to mislead Income Security, Mr. Troniak prepared a fictitious statement of account for \$5,000.00, and transferred these funds from his trust account to his general account for the purpose of further fees. Mr. Troniak intended to utilize these funds to provide gifts every month to client F in order for client F to continue to receive her Income Security benefits as well as the small monthly gifts from Mr. Troniak. Fortunately client F was concerned with Mr. Troniak's proposal of monthly gifts and reported the full settlement award to Income Security.

Mr. Troniak also entered guilty pleas to charging fees in excess of those provided for by Queen's Bench Rule 74.14 on an estate matter and breaching an undertaking that he made to the Public Trustee's Office. The Public Trustee was involved with the estate and had written to Mr. Troniak outlining a concern that the fees charged by Mr. Troniak on the Estate appeared to be in excess of the Queen's Bench tariff. Mr. Troniak replied to the Public Trustee indicating that he would make the appropriate adjustments in his fees so as to comply with the tariff. However, Mr. Troniak failed to adjust his fee so as to effect compliance.

Comments of the Discipline Committee

On the personal injury file, the Committee noted that one count dealt with a technical

breach of Law Society Rule 129(1)(c) in that fees were transferred from the trust account to the general account prior to forwarding a copy of the account to the client. Further, prior to the Discipline Committee hearing, an Arbitration was held with respect to the client's concern that fees were taken in excess of the contingency fee arrangement. A refund was ordered to be paid to the client as a result of the Arbitration and the client received the refund in its entirety.

The Discipline Committee was particularly concerned with Mr. Troniak's admission of misleading a public institution. The Committee found it to be an aggravating factor that Mr. Troniak not only participated in the attempt to mislead Income Security, but in fact instigated the entire process. The Committee expressed its concern, that had Mr. Troniak's scheme been carried to fruition, client F and Mr. Troniak would have been exposed to significant legal difficulties. The Committee pointed out to Mr. Troniak that the creation of a false document was a serious matter and one that the Law Society condemns.

As to the estate matter, the Committee commented that this matter related to excessive billing. In addition, the Committee was seriously concerned with Mr. Troniak's failure to comply with his undertaking to the Public Trustee whereby he undertook to adjust his statement of account to comply with the Queen's Bench tariff.

Findings and Penalties

The Committee found Mr. Troniak guilty of professional misconduct based upon his admissions to each of the five charges. The Committee imposed a 60 day suspension and ordered that costs be paid in the amount of \$2,200.00. In addition, the Committee ordered that Mr. Troniak provide proof to the Society that each beneficiary of the Estate had received a refund of the fees which exceeded the tariff.

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