



DISCIPLINE CASE *DIGEST*

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Case 96-10 (Amended)

VICTOR BRIAN OLSON
Winnipeg, Manitoba

Called to the Bar
June 24, 1982

Particulars of Charges
Professional Misconduct (3 counts)

- failing to send an account (Rule 129(c))
- trust transfers without authority (Rule 137)
- bill before work completed

Date of Hearing
October 25-27, 1995 and January 23 and April 9, 1996
Written Decision - March 21, 1996

Panel
Lawrence McInnes (Chair)
Don Little, Q.C.
Renate Krause

Disposition

- Acquitted on one count, convicted on two counts (Rule 129(c) and Rule 137)
- Fine \$500.00
- Costs \$2,500.00

Counsel
Garth H. Smorang, Q.C. for the Law Society
Sidney Green, Q.C. for the member

Improper Fees

Facts

Mr. Olson was retained by clients to act on the sale of a revenue property. On six occasions 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, in the same transaction, appropriated monies held by him in trust, being the proceeds of the sale of the property, to pay his fees and disbursements without having the authority of his clients to do so on six occasions, thereby breaching Rule 137 of the Rules of the Law Society of Manitoba.

Comments of the Discipline Committee

As to the breach of Rule 129(c), the evidence of the complainants was to the effect that they had never received Statements of Account on any of the six instances particularized. Mr. Olson admitted in testimony that it was likely that some of the bills were not sent to the clients, however, he believed that a number of them had in fact been sent. The Committee preferred the evidence of the complainants. Further, the Committee found that Mr. Olson's failure to send out the Statements of Account was not an accident nor an isolated incident of inadvertence on his behalf.

As to the breach of Rule 137 Mr. Olson had acted in the past for these clients on a number of occasions regarding real estate transactions and had charged them \$200.00 plus disbursements for each transaction. The clients' testimony was that Mr. Olson agreed to handle this transaction for the same fee. Mr. Olson charged the total of \$750.00 to the clients through six Statements of Account and withdrew those monies, plus GST and disbursements, from trust monies held on behalf of the clients. Mr. Olson's position was that he had general authority to do so, which the Committee was to infer from the past course of conduct between himself and the clients. The Committee found that the general authority which Mr. Olson sought to establish from a pattern of conduct was neither reasonable nor did the Committee believe that Mr. Olson held that view in fact.

Mr. Olson submitted time records to show that he had spent in excess of the amount actually charged on the matter, and complications which had arisen from it. The Committee found that what Mr. Olson may have been entitled to charge his client was not necessarily the same as what he had authority to transfer from his trust account. At best, the billing pattern suggested an effort by Mr. Olson to recoup, albeit by way of unauthorized transfers, fees he believed he had earned on a quantum meruit basis.

The third count alleged that while acting for these clients Mr. Olson transferred money from trust for fees and disbursements prior to performing legal services. The Committee was not satisfied that count number 3, as framed, was proved.

Findings and Penalties

The Committee found Mr. Olson guilty of professional misconduct with respect to the remaining two counts. The Committee imposed a fine of \$250.00 on each of the two counts and ordered that costs be paid in the amount of \$2,500.00.

Note

Mr. Olson filed an appeal from his conviction to the Manitoba Court of Appeal on May 6, 1996. The appeal was heard on November 13, 1997 and it was the unanimous decision of the Court that the appeal be dismissed with costs.

An application for Leave to Appeal was filed by Mr. Olson in the Supreme Court of Canada on January 12, 1998. On May 28, 1998 the Supreme Court of Canada dismissed the Application for Leave to Appeal with costs.

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