



DISCIPLINE CASE *DIGEST*

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Case 97-04

DENNIS MICHAEL TRONIAK
Winnipeg, Manitoba

Called to the Bar
June 30, 1977

Particulars of Charges
Professional Misconduct

- Charging a fee which was not fair and reasonable (x4)

Date of Hearing
July 3, 1997

Panel
D.G. Frayer, Q.C. (Chair)
N.H. Sims, Q.C.
W.W.A. Riedel

Disposition

- 60 day suspension
- Costs of \$5,000.00

Counsel
E.R. Dawson, Q.C. and J.R. Gallagher for the Law Society
J.M. Scurfield, Q.C. for the Member

Excessive Fees

Facts

Mr. Troniak, a Barrister and Solicitor, called to the Bar of Manitoba on June 30, 1977, appeared before the Discipline Committee on July 3, 1997, at which time he entered guilty pleas to 4 counts of professional misconduct.

The misconduct related to three separate client matters. On the first matter, Mr. Troniak represented client A in respect of a claim for disability benefits. Client A retained Mr. Troniak on a contingency fee basis. Upon settlement of the claim for disability benefits, Mr. Troniak charged an excessive fee.

Client B retained Mr. Troniak with respect to a claim for disability benefits and entered into a written contingency agreement. An action was commenced by Mr. Troniak on B's behalf against the insurer and ultimately settled on terms that the client would receive a sum of money in satisfaction of all claims for the period ending January 31st, 1992. As well, the insurer began paying monthly benefits to B. Mr. Troniak charged a fee in excess of that prescribed by the contingency agreement. Thereafter, the insurer again ceased making monthly payments to B. Mr. Troniak commenced a second action against the insurer which was settled on the basis of a further payment to B. A further fee was taken from such settlement by Mr. Troniak.

In the third matter, Mr. Troniak was retained by client C in respect of difficulties the client was encountering in obtaining benefits from the Worker's Compensation Board. Client C signed a written contingency agreement. Two days after Mr. Troniak's retainer, an employee of the Worker's Compensation Board recommended, by way of an internal memo, that the Board pay wage loss benefits retroactively and commence making further monthly payments. The Board agreed and retroactive benefits were paid.

In each of the cases, the fees charge by Mr. Troniak were in excess of that prescribed in the contingency agreement and could not be justified in the light of all pertinent circumstance, including the factors set forth in Commentary 1 of the Rule in Chapter 11 of the Code of Professional Conduct and/or were so disproportionate to the services rendered as to introduce the element of undue profit. The fees were also charged on future payments the clients would receive. This was not provided for in any of the contingency agreements and therefore the fees were excessive.

In each case all excess fees charged were repaid to the client by Mr. Troniak.

Decision and Comments

The members of the Committee were concerned that this was the third time that the member had appeared before the Discipline Committee. On the two previous appearances the member entered a plea of guilty to charges involving the stipulation of an excessive fee. The member's last appearance before the Discipline Committee was in February of 1996 which resulted, on a guilty plea, to a 60 day suspension and an order that the member make a contribution to the Society's cost. The conduct which gave rise to the charges before the Discipline Committee in July of 1997 all pre-dated the member's appearance before the

Discipline Committee in February of 1996.

The Committee was not unanimous with respect to the appropriate disposition to be ordered in response to the member's plea of guilty. The majority were of the view that Mr. Troniak took advantage of clients who were in a vulnerable position and that his motive involved an element of undue profit. The majority noted that this type of conduct must attract a serious penalty.

The minority would have imposed a fine of \$5,000.00 and ordered the member to contribute to the costs of the Society in the amount of \$3,000.00. The minority viewed this to be an appropriate disposition because the conduct before the Discipline Committee predated the appearance before the Discipline Committee in February of 1996.

Penalty

The Committee found Mr. Troniak guilty of professional misconduct based upon his admissions to each of the four charges. The Committee, by way of a majority decision, imposed a 60-day suspension and ordered that costs be paid by Mr. Troniak in the amount of \$5,000.00.

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