



DISCIPLINE CASE *DIGEST*

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Case 98-02

JERRY GEORGE ROSS
Winnipeg, Manitoba

Called to the Bar
June 26, 1973

Particulars of Charges
Professional Misconduct

- Breach of trust condition

Date of Hearing
June 19, 1998

Panel
Paul J. Brett, (Chair)
Douglas Ward, Q.C.
John H. Combs

Disposition

- Fine of \$1,500.00
- Costs of \$1,000.00

Counsel
J.R. Gallagher for The Law Society of Manitoba
Alain J. Hogue for the Member

Breach of Trust Condition

Facts

Mr. Ross was retained by a client to represent her in matrimonial matters including finalization of a separation agreement. Opposing counsel sent a letter to Mr. Ross confirming that the client's husband would pay Mr. Ross' reasonable legal fees. The terms of the separation agreement were finalized and Mr. Ross submitted a statement of account in the amount of \$1,292.03 to opposing counsel for payment.

The husband was only able to raise \$600.00 and provided his counsel with a cheque in that amount payable to Mr. Ross with instructions that it be offered in full payment of the outstanding account. Accordingly, the cheque was sent by opposing counsel to Mr. Ross on trust conditions that Mr. Ross would provide written confirmation that the cheque was accepted in full satisfaction of his account and that he would not request any further sums of money from the husband. If the trust conditions were not acceptable to Mr. Ross then the monies were to be returned to opposing counsel upon demand.

On the date the cheque was received by Mr. Ross, he deposited it to his general bank account and four days later advised opposing counsel by letter that he was not prepared to accept the \$600.00 in full payment of his statement of account. Opposing counsel sent a letter to Mr. Ross the following day advising that as Mr. Ross was not prepared to comply with the trust conditions he was to return the \$600.00 cheque immediately. Two further written demands for return of the cheque were made by opposing counsel. Mr. Ross failed to return the cheque or monies in the sum of \$600.00 to opposing counsel.

Decision and Comments

Mr. Ross entered a plea of guilty to the charge of professional misconduct. The Committee commented that upon receipt of the cheque and being unwilling to accept the amount in full payment of his account, Mr. Ross had the option of either negotiating a variation to the trust conditions or, alternatively, returning the funds to opposing counsel indicating that other remedies would be pursued.

Penalty

The Committee found Mr. Ross guilty of professional misconduct and imposed a fine of \$1,500.00 and also ordered that he pay costs in the amount of \$1,000.00. It was further ordered by the Committee that the fine and costs totalling \$2,500.00 be paid in five equal instalments commencing August 1, 1998 and concluding on December 1, 1998. If default occurred on a payment the Committee ordered that the balance would immediately become due and owing and the entire amount would be payable by the end of the business day on which the default occurred or at the end of the next business day if default occurred on a weekend or holiday. The Committee further ordered that if default occurred and the entire amount was not paid as directed, Mr. Ross would be automatically suspended from the practice of law.

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