



# DISCIPLINE CASE *DIGEST*

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## Case 99-05

### JERRY GEORGE ROSS

Winnipeg, Manitoba

### Called to the Bar

June 26, 1973

### Particulars of Charges

Professional Misconduct (25 counts)

- Failure to file Annual Trust Account Report (Form D);
- Failure to pay penalties due for late filing of Annual Trust Account Report (Form D);
- Charge or accept a fee that was not fully disclosed fair and reasonable (x3);
- Failure to serve client in conscientious, diligent and efficient manner (x4);
- Breach of trust accounting rules (x4);
- Failure to respond to communications from the Law Society (x5);
- Failure to remit employee deductions to Revenue Canada;
- Misleading Revenue Canada as to earnings paid to an employee;
- Failure to co-operate with insurer;
- Conflict of interest (x2);
- Failure to meet financial obligations incurred or assumed in the course of practice (x2)

### Date of Hearing

November 19, 1999

### Panel

H. Buchwald, Q.C., (Chair)

J. G. McKelvey

E. B. Irwin

### Disposition

- Reprimand;
- Costs of \$10,000.00;
- Member to provide a written undertaking to the Society:

- i. to permanently withdraw from the practice of law effective November 19, 1999;
- ii. to never apply to resume the practice of law;
- iii. not to apply for membership in any other law society without first advising the Society;
- iv. acknowledging that any breach of the written undertaking will result in an immediate suspension from the practice of law.

#### **Counsel**

J. R. Gallagher for The Law Society of Manitoba  
E. W. Olson, Q.C., for the Member

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#### **Failure to Serve Clients**

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#### **Facts**

Mr. Ross failed to file on or before October 31, 1997 his Annual Trust Account Report (Form D) for his trust year ending June 30, 1997. The Form D was received 112 days late on February 20, 1998, but was not in the prescribed form as Part B thereof had been completed by a person who was not an accountant. Subsequent thereto, Mr. Ross failed to file a proper Form D and also failed to pay late filing penalties of \$1,120.00.

While acting in an estate matter, Mr. Ross sent the four personal representatives/beneficiaries a copy of Queen's Bench Form 74AA and obtained a letter of direction signed by all four authorizing him to charge fees in excess of the tariff. However, prior to obtaining the letter of direction, Mr. Ross did not inform the personal representatives/beneficiaries about the fee he would be charging or how the fee would be calculated and they did not agree to any stipulated fee. Mr. Ross charged the estate a fee which was \$1,468.88 over the tariff.

In the same estate matter, Mr. Ross received the proceeds of the assets of the estate and invested a portion of the funds in a specific trust investment account. He then submitted three statements of account totalling \$575.00 plus G.S.T. for fees in preparing the monthly reconciliations of the account.

Mr. Ross was retained on a contingency fee basis by a client who had sustained a workplace injury. Prior to the matter being concluded, Mr. Ross was suspended from the practice of law whereupon he sent the client a bill for fees and disbursements. The client brought assessment proceedings and the court ruled that, as the matter was not concluded, it was premature under the terms of the contingency contract for Mr. Ross to send an account for fees.

Mr. Ross was retained in an estate matter in May, 1994 and two months later arranged for chartered accountants to prepare the final income tax return of the estate. The sum of \$66.36 owed by the estate was not paid by Mr. Ross until November 1, 1996. Additionally, a number of savings bonds had been received by Mr. Ross in May of 1994 and he did not complete the necessary legal services respecting the bonds until July, 1997. He also did not provide the personal representatives with a final report and accounting until November, 1997.

In another estate matter, Mr. Ross obtained an Order to Pay which authorized and instructed him to pay from estate funds in his trust account an outstanding \$2,002.81 credit card account of the deceased. After transferring his fees from trust there were insufficient funds to the credit of the client to pay the credit card bill and Mr. Ross failed to attend to payment of the account.

Mr. Ross was retained in September, 1994 to act for a client regarding the sale of certain assets of a small business. The sale closed in October, 1994 and for the next 13 months the client regularly contacted Mr. Ross to inquire when the matter would be concluded. The final reporting letter, statement of account and cheque for the balance of the sale proceeds were not received until December, 1995, although Mr. Ross had transferred funds from his trust account to cover his fees in October, 1994.

Mr. Ross was retained by clients in January, 1997 to transfer a residential property into their names. The matter was complicated by the fact that in 1981, without notice to the owner, a contractor had filed a Builders Lien for \$1,600.00 and a Certificate of Lis Pendens against the property. Legal proceedings to remove the Builder's Lien and the Certificate of Lis Pendens from the title were completed by August, 1997.

The clients raised concerns as to the amount Mr. Ross transferred from trust for his fees and in December, 1997 he promised that he would review the fees. In January, 1998 the clients commenced calls to Mr. Ross two to three times a week to determine the status of his review. In May, 1998 Mr. Ross promised to issue a revised statement of account and a cheque for the difference. Despite further calls to Mr. Ross the clients did not receive any final reporting letter or refund.

The Law Society conducted a spot audit of Mr. Ross's trust accounts and records for the period January 1, 1997 to August 31, 1998. Mr. Ross had utilized pooled trust bank accounts at three separate financial institutions. The audit determined that for each of the three accounts, Mr. Ross had failed to obey or did not conform with the requirements of the Rules Respecting Accounts. In particular, Mr. Ross did not keep the books, records and accounts at his chief place of practice, did not maintain month end control account balances, did not maintain monthly bank reconciliations or control account balances, failed to cover service charges levied by the financial institutions against the accounts, issued trust cheques on behalf of clients in amounts greater than the funds clients had to their credit, and failed to maintain sufficient balances on deposit in his trust accounts to meet all of his obligations to his clients.

On five occasions, Mr. Ross received letters from the Society requesting that he respond in writing within a specified period of time. Mr. Ross failed to provide responses to four of the letters and with respect to the fifth letter he failed to provide the information that was requested by the Society.

During the years 1995, 1996, 1997 and part of 1998, Mr. Ross failed to remit to Revenue Canada on behalf of his firm the full amount of employee source deductions for Income Tax, Canada Pension Plan and Employment Insurance. The amount outstanding as of October 15, 1998, inclusive of arrears, penalties and interest, was \$17,753.68. He also misled Revenue Canada in a supplementary T4 slip which indicated that one of his employees had been paid \$2,563.00, when in fact the employee was still owed \$1,193.40 of that amount by Mr. Ross.

The Insurance Department of the Society received notice from Mr. Ross of a potential negligence claim concerning a mortgage he had drawn. A claims report form was forwarded to Mr. Ross with a request that he return the completed form to the Society within two weeks. Several months later, after seven reminder letters were sent to Mr. Ross, he delivered a partially completed claims report, however, it was worthless as it was missing much critical information.

Mr. Ross prepared a Last Will and Testament for an elderly client and had an associate lawyer and his secretary attend upon the client to execute the document. The will provided that Mr. Ross was to receive a bequest of 40% of the residue of the estate. The client was not advised that there was a conflict of interest and that Mr. Ross could not prepare the will as it included a testamentary gift to him, or that the client should obtain independent legal advice before executing the will. By the time this situation came to light the client was not competent to amend or revoke the will.

Mr. Ross's firm acted for a client in a negligence action. When the associate who worked on the file left Mr. Ross's employ, she sent a statement of account for fees to Mr. Ross for work done prior to leaving his employ. She also sent two statements of account to the client for work done by the associate after she left Mr. Ross's office. Mr. Ross then acted on the client's behalf in assessment proceedings. The Master dismissed the application relating to the first statement of account noting that this account had been sent to Mr. Ross and was therefore not part of the assessment proceedings brought in the client's name. While allowing the application relating to the other two statements of account, the Master commented that the situation had arisen from the deterioration and termination of an association between Mr. Ross and the former associate which would not have reached that point had Mr. Ross dealt with the separation expeditiously.

While acting for a client in a potential litigation matter, Mr. Ross requested and received a medical report from a doctor. The medical report was received with a statement of account in the amount of \$200.00 for preparation of the report. Mr. Ross failed to pay the doctor's account.

Mr. Ross acted for a client in a wrongful dismissal matter and conducted examinations for

discovery utilizing the services of a court reporter. Accounts and reminders were sent to Mr. Ross but he failed to pay the accounts totalling \$483.21.

### **Decision and Comments**

Mr. Ross entered a guilty plea to the 25 charges. The Committee found that his conduct constituted professional misconduct.

### **Penalty**

The Committee accepted the joint recommendation of both counsel and imposed the following penalty:

- a. Mr. Ross be reprimanded;
- b. The Society would accept Mr. Ross's written undertaking to:
  - i. permanently withdraw from the practice of law, effective November 19, 1999;
  - ii. never apply to resume the practice of law;
  - iii. not apply for membership in any other law society without first advising the Society;
  - iv. acknowledge that any breach of the written undertaking would result in an immediate suspension.
- c. In the event that Mr. Ross breaches his undertaking never to apply to resume the practice of law the entire proceedings before the Discipline Committee, including the decision of the Committee, would be provided to the Admissions and Education Committee; and,
- d. Mr. Ross pay costs in the amount of \$10,000.00.

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