

IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF JONATHAN GOBY,
A LAWYER OF ESTEVAN, SASKATCHEWAN

REPORT OF THE HEARING COMMITTEE

Hearing Committee: Victor Dietz, Q.C., Chair
Nicholas Cann
Dr. Greg Stevens

Counsel for the Law Society of Saskatchewan: Timothy F. Huber

Jonathan Goby for himself.

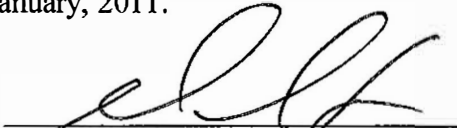
1. The Hearing Committee convened on November 24, 2010, by telephone conference. The Law Society was represented by Mr. Tim Huber. Mr. Goby represented himself.
2. The parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it. Neither party had any preliminary objections.
3. The original Notice of Hearing with proof of service and Amended Notice of Hearing dated October 21, 2010, were filed. The latter with the consent of Mr. Goby. As well, a Statement of Facts and Admissions were filed with Mr. Goby's consent. Notices of Hearing marked P1 and Statement of Facts and Admissions including Tab 4 and Tab 5 and Appendix D of Joint Exhibit Book were marked Exhibit P2.
4. The amended formal complaint alleges the following:

THAT JONATHAN GOBY, of the City of Estevan, in the Province of Saskatchewan, is guilty of conduct unbecoming in that:

1. He did prepare, or cause to be prepared, and did commission false Affidavits of Value in relation to certain real estate transactions handled by his law office;
2. Did mislead Information Services Corporation of Saskatchewan (ISC) by submitting Affidavits of Value which did not reflect the actual value of titles being transferred in relation to certain real estate transactions handled by his law office and in doing so did deprive ISC of fees to which it was entitled;
3. Did, by submitting Affidavits of Value to ISC reflecting values less than the actual value of titles, reduce the amount of fees paid to ISC and thereby obtained an unfair competitive advantage in the marketplace; and
4. Did withdraw funds from his trust account prior to those funds becoming properly payable to him in respect of a liability of his clients for fees, disbursements or other expenses.

5. Mr. Goby waived reading of the counts and entered guilty pleas to all counts.
6. By agreement of the parties, the Hearing Committee refers the sentencing of Mr. Goby to the Discipline Committee of the Law Society composed of Benchers of the Law Society of Saskatchewan at such time and date as mutually agreed upon.
7. Pursuant to Section 54(1) of *The Legal Profession Act*, 1990, this matter is being reported to the Chair of Discipline.

DATED at Regina, Saskatchewan, this 18th day of January, 2011.



Victor Dietz, Q.C., Chair



CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF JONATHAN GOBY,
A LAWYER OF ESTEVAN, SASKATCHEWAN**

ORDER

The Discipline Committee of The Law Society of Saskatchewan (hereinafter called the "Discipline Committee"), having convened a meeting on February 11, 2011, to assess penalty in relation to the decision of the Hearing Committee in this matter comprised of Victor Dietz Q.C. as Chair, Greg Stevens and Nicholas Cann, that Jonathan Goby (hereinafter called the "Member"):

Is guilty of conduct unbecoming a lawyer in that he:

- 1. did prepare, or cause to be prepared, and did commission false Affidavits of Value in relation to certain real estate transactions handled by his law office;**
- 2. did mislead Information Services Corporation of Saskatchewan (ISC) by submitting Affidavits of Value which did not reflect the actual value of titles being transferred in relation to certain real estate transactions handled by his law office and in doing so did deprive ISC of fees to which it was entitled;**
- 3. did, by submitting Affidavits of Value to ISC reflecting values less than the actual value of titles, reduce the amount of fees paid to ISC and thereby obtained an unfair competitive advantage in the marketplace; and**

4. did withdraw funds from his trust account prior to those funds becoming properly payable to him in respect of a liability of his clients for fees, disbursements or other expenses.

and after having heard submissions of the Member, and counsel on behalf of the Law Society of Saskatchewan Investigation Committee and after due deliberation to determine the action to be taken as a result of the Hearing Committee's decision, the Discipline Committee orders the following:

1. That the Member shall be suspended for a period of 12 months;
2. That the Member's suspension shall commence on May 1, 2011, or sooner with the consent of the Chair of Discipline;
3. That from the date of this Order until the commencement of the period of suspension, the Member shall not take on any new matters;
4. That the Member shall pay further restitution to Information Services Corporation in the amount of \$18,000.00 within one year of his resumption of practice, or such further period as may be allowed by the Chair of Discipline;
5. That the Member shall cooperate with the Law Society in notifying all clients impacted by his conduct and assist with the rectification of titles, shall pay any costs incurred in rectifying titles, and shall comply with any further direction from the Chair of Discipline with respect to the rectification of titles; and
6. That the Member shall pay costs in the amount of \$6,018.12 to the Law Society of Saskatchewan within one year of his resumption of practice, or such further period as may be allowed by the Chair of Discipline.

DATED at the City of Regina, in the Province of Saskatchewan, this 18 day of February, 2011.



Thomas Schonhoffer Q.C., Executive Director
Law Society of Saskatchewan

CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF JONATHAN GOBY,
A LAWYER OF ESTEVAN, SASKATCHEWAN**

**STATEMENT OF FACTS AND ADMISSIONS
OF JONATHAN GOBY**

In relation to the Formal Complaint dated December 14, 2009, as amended, alleging that he:

1. did prepare, or cause to be prepared, and did commission false Affidavits of Value in relation to certain real estate transactions handled by his law office;
2. did mislead Information Services Corporation of Saskatchewan (ISC) by submitting Affidavits of Value which did not reflect the actual value of titles being transferred in relation to certain real estate transactions handled by his law office and in doing so did deprive ISC of fees to which it was entitled;
3. did, by submitting Affidavits of Value to ISC reflecting values less than the actual value of titles, reduce the amount of fees paid to ISC and thereby obtained an unfair competitive advantage in the marketplace; and
4. did withdraw funds from his trust account prior to those funds becoming properly payable to him in respect of a liability of his clients for fees, disbursements or other expenses.

Jurisdiction

1. Jonathan Goby (hereinafter "the Member") is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (herein after the "Act") as well as the *Rules of the Law Society of Saskatchewan* (the "Rules"). Attached at **Tab 1** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's practicing status.

2. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated December 14, 2009. The Formal Complaint, as amended, is comprised of the four counts noted above. The original Formal Complaint was served upon the Member on December 16, 2009. Attached at **Tab 2** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service.

Background of Complaint

3. The Law Society began an investigation into the Member after becoming aware of anomalies in relation to the Member's real estate practice.
4. Law Society of Saskatchewan auditor, John Allen, attended the offices of the Member on numerous occasions starting on May 28, 2009. The second attendance came shortly after on June 1, 2009.
5. The first two attendances at the Member's offices revealed that the Member had a practice of submitting Affidavits of Value to Information Services Corporation [ISC] which were less than the sale price of the property in question. The reduction reflected in the Affidavits of Value in some cases was as high as \$95,000.00. In that particular case the reduction in value amounted to 31%.

Particulars of Conduct

Counts #1 through #3

6. Sworn Affidavits of Value are required to be filed pursuant to the Land Titles Regulations, 2001 when transferring land.
7. The Land Titles Regulations, 2001 define "Value" as:

"value", with respect to a title, means:

(i) if a person acquires a title in an arm's length transaction, the value of the cash and the fair market value of cash equivalents, rounded down to the nearest dollar and excluding any amount paid in taxes, that is given in exchange for the title or a grant of the land, free of any trusts and unencumbered by any interests except interests implied pursuant to the Act;

(ii) if a person acquires a title in a transaction that is not an arm's length transaction, the value of the cash and the fair market value of the cash equivalents, rounded down to the

nearest dollar, that would have been given in an arm's length transaction in exchange for the title or a grant of the land, free of any trusts and unencumbered by any interests except interests implied pursuant to the Act;

8. The fees charged by ISC to transfer property depends on the value of the property as set out in the Affidavit of Value filed in relation to the transaction. ISC charges .3% of the value of the property transferred in addition to other ancillary fees for registration of interests. ISC bases the value for the purposes of assessing this transfer fee on the Affidavit of Value filed with the transfer application.
9. The value set out in the Affidavit of Value also appears on every land title search that is done subsequent to the completion of the transfer. If, for example, an individual paid \$200,000.00 for a piece of property, and an Affidavit of Value for \$100,000.00 was filed in relation to that transfer, the Title Value shown on the Title Search until a subsequent transfer took place would reflect the lower, inaccurate value of \$100,000.00.
10. Reducing the value set out in the Affidavit of Value had the effect of reducing the amount of fees payable to ISC that would have normally been associated with the transaction.
11. The Member states that he filed Affidavits of Value reflecting reduced amounts because he was of the view that the involved real estate was overpriced. Between 2006 and 2008, real estate prices in Saskatchewan and Estevan increased sharply. The vacancy rate in Estevan during this period dropped to virtually zero. The Member states that if, in his opinion, the property being sold was not priced appropriately, according to his opinion, he would file an Affidavit of Value sworn by his wife and assistant, Reta Goby.
12. For every transaction where the value submitted to ISC was reduced, the Affidavit of Value was prepared under the direction of Mr. Goby and commissioned by Mr. Goby.
13. The Member started this practice in approximately May 2007.
14. Changes in value were always downward. No examples were identified where Mr. Goby filed an Affidavit of Value for greater than the purchase price.

15. On many occasions, the Member discarded Affidavits of Value from vendors or vendors counsel reflecting the actual sale price in favour of the reduced Affidavit of Value sworn by his wife and commissioned by himself.
16. Most of the Member's clients were not aware of his preparation and filing of a reduced Affidavit of Value in relation to their transaction.
17. Reta Goby does not have any training in real estate valuation other than that she has worked as the Member's assistant for a number of years. The Member states that he and his wife review newspapers and discussed real estate values regularly.
18. That the Member do not have any training in real estate appraisal or valuation beyond his practice of law.
19. The practice of filing artificially reduced Affidavits of Value had the effect of lowering the total or all inclusive charge for his services which had allowed his prices to be lower than those of his competitors for the same transaction. This represented an unfair competitive advantage from which the Member likely benefitted financially.
20. The Member did not provide invoices to his clients which broke out individual disbursements on his real estate files including ISC fees. Only a large lump sum amount for disbursements (including copying, courier and all ISC fees) was disclosed on his legal accounts. This accounting practice rendered it impossible to determine whether the Member retained any savings for himself or passed the savings on to his clients.
21. Upon his discovery of the Member's practices in real estate files, John Allen had the Member sign an Undertaking to stop producing and filing reduced value Affidavits of Value. The Undertaking also required that the Member properly break down his disbursements on his legal accounts instead of using a lump sum. Attached as **Tab 3** is the Undertaking of Jonathan Goby signed on May 28, 2009.
22. On October 5, 2009, after a further analysis of a larger file sample John Allen concluded his investigation in relation to the Member's real estate practice.
23. John Allen obtained his file sample by way of random file requests to the Member who provided copies of the files from his electronic file storage system. Files

- requested were typically multiple files per month going backward in time to determine when the use of reduced Affidavits of Value began. The files reviewed relate to the period from May 2009 to May 2007. Nearly all of the files randomly selected by John Allen for review involved reduced Affidavits of Value sworn by the Member's wife.
24. Attached at **Tab 4** is a copy of a summary chart in relation to 47 sample real estate transactions handled by the Member between May 2007 and May 2009. The summary represents roughly a quarter of the total transactions handled by the Member during this period which was approximately 200. Based on the ISC packet verification notices available (and in some cases the Affidavits of Value of Reta Goby), each of the 47 files set out in the chart involve the filing of an Affidavit of Value in an amount less than the actual purchase price (value) for the property in question.
 25. The actual value of the 47 transactions totals approximately \$8,184,940.00. The registration value as reported by the Member for these transactions was approximately \$6,204,500.00. This represented a difference of approximately \$1,980,440.00. The ISC fees saved in relation to this reduction equals approximately \$5,941.32. The average reduction of value in relation to this sample of 47 files was approximately \$42,137.00.
 26. The average percentage of reduction in relation to these 47 files was approximately 24%. The range of reduction on individual files was from 53% (\$32,000 to \$15,000) and 49% (\$110,000 to \$54,500) (files #9 and #5) at the high end to reductions of 10% (\$320,000 to \$290,000) and 12% (\$420,000 to \$370,000) (files #18 and #27) at the low end.
 27. In the course of his investigation John Allen examined the Member's invoices to determine whether or not ISC fees were being charged to clients based on the values of the real estate transactions or on the reduced amount filed by the Member's office. No determination could be made in this regard as a result of the Member's practice of showing only lump sum disbursements and his lack of any defined system for tracking disbursements on a given file.

28. John Allen did determine from a review of a sampling of files from before May 2007 [Tab 5] that the average disbursements (excluding known ISC fees) where the Member was representing the purchaser equalled \$35.83. After May 2007, disbursements (excluding known ISC fees), on files where the Member was representing the purchaser and a false Affidavit of Value was filed, increased to an average of \$163.45. The increase on average totalled \$127.62. The average ISC fees saved in relation to the 47 files set out in the summary at Tab 5 equals \$126.41. The Member states that this increase was a result of the realization that he was not recovering adequate amounts for file disbursements that he had incurred. The Member states that the increase was purposeful so as to more accurately reflect his estimate of actual disbursements.

Count #4

29. During the course of the investigation it became apparent that the Member was frequently engaged in the practice of withdrawing his fees from trust in relation to real estate matters prior to the work being complete or substantially complete.
30. That Rule 940(1)(c) states that “a member shall not withdraw or authorize the withdrawal from a trust account of any funds” unless “the funds are properly payable to the member in respect of a liability of the client to the member for fees, disbursements or other expenses”
31. That attached hereto as **Tab 6** are 15 examples showing the Member disbursing funds to Goby Law Office from the client trust account before work on the file was complete or substantially complete.
32. The Member’s practice was to bill and receive fees on real estate files either immediately upon receiving any money into trust, or shortly thereafter. Various examples show the Member paying himself full fees associated with the file on the same day the first monies were received into trust rather than waiting until the work on the file was complete or substantially complete.
33. The Member’s conduct constitutes a violation of rule 940(1)(c).

Prior Record

34. The Member has no prior findings of conduct unbecoming a lawyer on his record.

DATED at the City of Estevan, in the Province of Saskatchewan, this _____ day of November, 2010.

JONATHAN GOBY