



The Law Society of Saskatchewan

GORDON BALON, Q.C.

HEARING DATE: February 16, 2016

DECISION DATE: June 28, 2016

Law Society of Saskatchewan v. Balon, 2016 SKLSS 8

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF GORDON BALON, Q.C.,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

Hearing Committee:

Darcia G. Schirr, Q.C., Chair

Nikki Rudachyk

Judy McCuskee

Counsel:

Karen Prisciak, Q.C., Counsel for the Conduct Investigation Committee

Mitchell J. Holash, Q.C.

INTRODUCTION

1. The Hearing Committee of the Law Society of Saskatchewan (the “Hearing Committee”) convened on February 16, 2016 to hear this matter. No objection was taken to the composition of the Hearing Committee, the conference call format for the hearing or any other matter relating to the proceedings giving rise to the hearing.

2. The Member plead guilty to three charges of conduct unbecoming as set out in a Formal Complaint dated May 4, 2015. Those charges are as follows:

- 1) Did enter into and continued in a business transaction with his client, S.D., when his interests and the interests of his client were in conflict;
- 2) Did prepare and sign an Offer to Purchase his property with his client, S.D., on terms beneficial to him without ensuring his client had independent legal advice;
- 3)

- 4) Did prefer his own interests over those of his client, S.D., in receiving a \$40,000.00 payment under the terms of the Offer to Purchase to the detriment of his client.
3. Charge No. 3 was withdrawn at the outset of the hearing.
4. The hearing proceeded on the basis of an Agreed Statement of Fact and Admissions, a copy of which is appended to this Decision.
5. The Hearing Committee accepts the Member's guilty plea to the three charges and finds the Member is guilty of conduct unbecoming in relation to those three charges. A joint submission on sentence was presented and the Hearing Committee heard submissions in support of the joint submission. The task for the Hearing Committee is to impose a sentence.

FACTS AND BACKGROUND

6. On November 21, 2012, the Law Society received a complaint from S.D. regarding the Member. The Member represented S.D. in the past, primarily on real estate transactions. In the spring of 2012, the Member offered to sell his office building to S.D. for \$565,000.00. The office building included the Member's law office and a bar. The Member drafted the Offer to Purchase which included a provision that a \$40,000.00 deposit would be forfeited should the sale not proceed. The \$40,000.00 deposit was paid by trust funds held by the Member on deposit for S.D.
7. The sale did not conclude. After signing the Offer to Purchase, S.D. received information from the bar owner which lead S.D. to question the reliability of rent he might receive from the tenant occupying the building. Paragraphs 12 through 14 of the Agreed Statement of Fact and Admissions are as follows:

12. Subsequent to signing the Offer to Purchase S.D. was approached by the principal of the existing tenant corporation who earlier had himself unsuccessfully offered to purchase the building from the Member. The tenant's principal told S.D. that the tenant corporation of the bar was at risk of losing its liquor license. He was also told of a lawsuit the tenant had commenced against the City of Prince Albert and that bylaw enforcement charges were pending against the tenant corporation concerning parking in a lot adjacent to the building.

13. After this conversation S.D. approached the Member to discuss what information the Member had prior to the signing of the Offer to Purchase. The Member told S.D. that he knew of the bylaw enforcement issues with the tenant corporation and denied that the issues put the tenant's rent in jeopardy and therefore did not create an obligation for him to disclose any information regarding the tenant corporation to S.D.

14. On April 12, 2012, S.D. wrote to the Member indicating that he was not prepared to continue the purchase of the Member's property based on the information regarding the tenant corporation.

8. S.D. sought the return of the deposit. The Member maintained that the deposit would be forfeited as provided for in the Offer to Purchase. Ultimately the Member sold the office building to another purchaser and the tenant who operated the bar remains in the building.
9. Throughout the transaction, S.D. did not obtain independent legal advice.
10. The Member is 68 years of age and has practiced law for over 40 years, primarily in Prince Albert. He has no prior discipline history with the Law Society. Counsel for the Member advised that the Member has significant health problems that affected his ability to practice law. His health problems began in the late 1990's and over the years his health has increasingly deteriorated.
11. The Member resigned as a member of the Law Society of Saskatchewan in November 2014. The Member remains subject to disciplinary proceedings as a "former member" given section 34.2 of *The Legal Profession Act, 1990*.

SUBMISSIONS ON PENALTY

12. As indicated, counsel submitted a joint submission regarding sentence which is as follows:
- a. The Member shall receive a reprimand;
 - b. The Member shall pay a fine of \$500.00 to the Law Society;
 - c. The Member shall pay costs in the amount of \$4,000.00 to the Law Society.
13. In support of the joint submission, counsel for the Conduct Investigation Committee referred to the case of *Law Society of Saskatchewan v. Halford*, 2014 SKLSS 6, and the cases referred to in that decision which are as follows:
- Law Society of Saskatchewan v. Howe*, 2012 SKLSS 8
Law Society of Saskatchewan v. Simaluk, 2012 SKLSS 1
Law Society of Saskatchewan v. Johnston, 2011 SKLSS 7
Law Society of Saskatchewan v. Braun, (March 6, 2009)
14. Counsel for the Conduct Investigation Committee advised that the Member fully cooperated with the investigation and the discipline process. Both counsel submitted that the joint submission served the purposes of general and specific deterrence.

DECISION

15. Hearing committees have a duty to consider joint submissions. Although a hearing committee is not bound to endorse a joint submission, the case law makes clear that deference should be given to joint submissions. A hearing committee must assess whether the joint submission is appropriate, within the range of sentences for similar conduct, fit and reasonable, and consistent with the public interest. (*Rault v. Law Society of Saskatchewan*, 2009 SKCA 81.)

In the same year that *Rault* was decided, the Saskatchewan Court of Queen's Bench considered the case of *Pankiw v. Board of Chiropractors' Assn. of Saskatchewan*, 2009 SKQB 268. The court stated:

34 Joint submissions are to be encouraged, not ignored. If joint submissions are ignored, plea bargains such as occurred here will be much less likely to occur. Lengthy discipline hearings and increased costs to be borne initially by members of the profession and perhaps ultimately by the public they serve will result. Joint submissions are in the public interest and should be followed by administrative tribunal in the same fashion as is done by the Courts unless it can be clearly demonstrated they are unfit, unreasonable or contrary to the public interest.

16. A key component to endorsing a joint submission is whether the submission falls within the appropriate range of sentence for similar cases. In examining the cases:

(a) *Halford* – the member entered into a business relationship with his clients in order to purchase a commercial building. A company was created with the shares being held equally by the member and the clients. The member drafted a Shareholders Agreement. Conflict between the parties and litigation followed. No independent legal advice was obtained by the clients. The decision states: “There also does not appear to be any evidence of a commercial advantage gained by the member as a result of the conflict of interest situation.” A joint submission consisting of a reprimand, a \$500.00 fine, and costs in the amount of \$2,195.00 was accepted.

(b) *Howe* – the member provided a mortgage loan to his secretary's parents who were in difficult circumstances. The mortgage had a 0% interest rate, but it provided for a \$10,500.00 lending fee. The property was sold and the member received the \$10,500.00 lending fee. The end result of the transaction arranged by the member was to place the clients in a better financial position, although the \$10,500.00 lending fee represented a significant return on investment for the member. A joint submission consisting of a reprimand and costs of \$1,645.00 was accepted.

(c) *Johnston* – the member failed to disclose he had an interest in a corporation while acting for a client purchasing a condominium. The corporation owned the condominium development. The client did not obtain independent legal advice regarding the risks in purchasing the property. The client and others brought litigation against the member and other members of the corporation because of aspects of the development. A joint submission consisting of a reprimand and payment of costs in the amount of \$1,955.00 was accepted.

(d) *Simaluk* - the member's client was unable to secure credit anywhere. The member entered into a mortgage agreement against the client's primary residence. The client did not have the benefit of independent legal advice. The client did not suffer any financial loss and the decision notes that in fact the client “was extended credit that she might not otherwise have been able to secure”. The matter came to light when the member reported

the loan as part of the annual trust review. A joint submission consisting of a reprimand and a fine of \$500.00 was accepted. Costs were not agreed to. The hearing committee assessed costs in the amount of \$1,495.00.

(e) *Braun* – the member entered into a farming operation with a client. The member financed the operation. The farming operation was not successful and the client was unable to repay the monies. The member prepared and registered a transfer of the land into his name. In a letter, the member encouraged the client to obtain independent legal advice, which the client did not do.

The member acted on the transfer. The Hearing Committee concluded, based on the agreed facts and submissions:

... we did not find that there was any dishonesty or lack of integrity concerning the member's dealings with A.A. concerning the third charge. Were this to be the case then a suspension would have been warranted but, in the absence of any suggestion of dishonesty or lack of integrity, the Committee's view was that a suspension was not warranted and hence we assume jurisdiction to sentence the member.

The Committee imposed a reprimand, a \$500.00 fine, and payment of costs. The “third charge” was that the member had entered into or continued a business relationship with a client and his interests and those of the client were in conflict. This is essentially similar to charge number one in this case.

17. There is no suggestion of fraud, dishonesty or the display of a lack of integrity in this case. If that were the case, as indicated in the *Braun* decision something much more serious than a reprimand and a fine would be warranted.

18. In the *Howe* case, the member received a lending fee but overall the transaction benefitted the client. In *Braun*, the member prepared and registered a transfer of land which was acted upon but in the end the member suffered a financial loss. In both those cases, the members were reprimanded and ordered to pay costs. In *Braun* a nominal fine was ordered.

19. The Hearing Committee noted with concern that the Member in this case, in preferring his own interests over those of his client, received a \$40,000 payment to the detriment of his client. In this aspect the case differs from those quoted in support of the joint submission. But for the Member's personal circumstances and the fact that he will no longer be practicing, the joint submission may not have been accepted.

20. Overall and in considering the relevant legal factors and the Member's personal circumstances, the Hearing Committee is prepared to endorse the joint submission. The Hearing Committee therefore orders:

- (i) The Member shall receive a formal reprimand;

- (ii) The Member shall pay a fine of \$500.00 to the Law Society of Saskatchewan on or before September 1, 2016; and
- (iii) The Member shall pay costs in the amount of \$4,000.00 to the Law Society of Saskatchewan on or before September 1, 2016.

DATED at Regina, Saskatchewan, this 28th day of June, 2016.

Darcia G. Schirr, Q.C., Chair

Nikki Rudachyk

Judy McCuskee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated May 4, 2015, alleging the following:

THAT GORDON BALON, Q.C., of the City of Prince Albert, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

- 1. did enter into and continued in a business transaction with his client, S.D., when his interests and the interests of his client were in conflict;**
- 2. did prepare and sign an Offer to Purchase his property with his client, S.D., on terms beneficial to him without ensuring his client had independent legal advice;**
- 3. did use his client's trust funds without written or verbal authorization of his client, S.D., in the course of the business transaction; and**
- 4. did prefer his own interests over those of his client, S.D., in receiving a \$40,000.00 payment under the terms of the Offer to Purchase to the detriment of his client.**

JURISDICTION

21. Gordon Balon, Q.C., (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").

22. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated May 4, 2015. The Formal Complaint is comprised of the allegations noted above. The Formal Complaint was served upon the Member on May 12, 2015. Attached at Tab 1 is a copy of the original Formal Complaint along with proof of service.

23. Charge #3 is withdrawn. The Member pleads guilty to Charges #1, 2 and 4 as set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

24. The Law Society began its investigation into the Member after receipt of a complaint dated November 15, 2012 and received by the Law Society on November 21, 2012 from S.D. The complaint arose from the Member's involvement with S.D. surrounding the purchase of a commercial building owned by the Member in Prince Albert, Saskatchewan.

PARTICULARS

25. There was an ongoing business relationship between the Member and S.D. wherein the Member acted as S.D.'s lawyer in commercial transactions. Most of the transactions involved the conveyance of real property.

26. In the spring of 2012 the Member offered to sell his building to S.D. for \$565,000.00. The tenants in the building included the Member's law office and another tenant corporation who ran a bar.

27. The Member drafted an Offer to Purchase which was signed by S.D. and the Member on March 12, 2012. At no time prior to signing the Offer to Purchase did the Member advise S.D. to seek independent legal advice. S.D. never received independent legal advice on the transaction with the Member.

28. The terms of the Offer to Purchase contemplated a \$40,000.00 deposit which would be forfeited should the sale not proceed. At the time the Member had significant trust monies on deposit for S.D. S.D. agreed that the Member could use his funds on deposit in the Member's trust account in satisfaction of the deposit under the Offer to Purchase.

29. The existing leases between the Member and the other tenant corporation were assigned to S.D.

30. The Member states he told S.D. that he would refer him to another lawyer in Prince Albert. On March 14, 2012 the Member sent a Transfer Authorization and trust account cheque for \$40,000.00 to Law Firm A with the telephone contact information for S.D.

31. However, S.D. states that he understood the Member was still his lawyer and the Member's side of the transaction would be referred to another lawyer in Prince Albert. At no time did S.D. instruct Law Firm A to act for him.

32. Subsequent to signing the Offer to Purchase S.D. was approached by the principal of the existing tenant corporation who earlier had himself unsuccessfully offered to purchase the building from the Member. The tenant's principal told S.D. that the tenant corporation of the bar was at risk of losing its liquor license. He was also told of a lawsuit the tenant had commenced against the City of Prince Albert and that bylaw enforcement charges were pending against the tenant corporation concerning parking in a lot adjacent to the building.

33. After this conversation S.D. approached the Member to discuss what information the Member had prior to the signing of the Offer to Purchase. The Member told S.D. that he knew of the bylaw enforcement issues with the tenant corporation and denied that the issues put the tenant's rent in jeopardy and therefore did not create an obligation for him to disclose any information regarding the tenant corporation to S.D.

34. On April 12, 2012, S.D. wrote to the Member indicating that he was not prepared to continue the purchase of the Member's property based on the information regarding the tenant corporation.

35. The Member wrote to Law Firm A on April 16, 2012 requesting the return of the deposit as it was the Member's position that S.D. had forfeited the deposit by failing to proceed with the purchase. On May 1, 2012 the Member again requested receipt of the deposit and the Transfer Authorization. Ultimately Law Firm A returned \$40,000.00 to the Member by letter dated May 1, 2012.

36. S.D. requested return of the \$40,000.00 deposit from the Member and the Member declined to do so.

37. The Offer to Purchase was prepared by the Member. The terms as drafted by the Member provided that the \$40,000.00 would be completely forfeited in the event the sale did not conclude. Prior to signing the Offer to Purchase, the Member was aware of the major tenant corporation's lawsuit and bylaw charges.

38. Ultimately, the Member sold the property to another purchaser (whose principal was the same as the tenant corporation's principal) for \$40,000.00 less than what was agreed to with S.D., closer to the price that the tenant's principal had previously offered unsuccessfully to the Member. The tenant corporation's lease at no time terminated and the bar continues to operate in the premises to date.

CURRENT STATUS OF MEMBER

39. The Member retired in November 2014 but had real estate assistants working closing out files until January 2015.

PRIOR RECORD

40. The Member practiced law in Saskatchewan for more than 40 years. The Member has no prior history of discipline with the Law Society of Saskatchewan.