



**The Law Society of Saskatchewan**

**JACOB ROBERT HOFFART**

**HEARING DATE: September 26, 2016**

**DECISION DATE: November 21, 2016**

***Law Society of Saskatchewan v. Hoffart, 2016 SKLSS 14***

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF JACOB ROBERT HOFFART,  
A LAWYER OF SWIFT CURRENT, SASKATCHEWAN**

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

Hearing Committee:

David K. Rusnak, Q.C., Chair

Perry Erhardt, Q.C.

Ron Barsi

Counsel:

Timothy Huber, Counsel for the Investigation Committee

Merv Shaw, Q.C., Counsel for Jacob Robert Hoffart

**BACKGROUND**

1. This matter came before the Hearing Committee pursuant to Section 47(1) of the Legal Profession Act, 1990 following a Formal Complaint set out by the Conduct Investigation Committee as follows:

That Jacob Robert Hoffart, of the City of Swift Current, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

1) Did in connection with his client, E.J., participate in the concealment of physical evidence so as to obstruct or attempt to obstruct the course of justice.

2. Mr. Hoffart entered a guilty plea with respect to the charge set out in the Formal Complaint. The hearing proceeded on the 26th of September, 2016 as a sentencing hearing on an Agreed Statement of Facts and Admissions with oral submissions from counsel for the Conduct Investigation Committee of the Law Society and from Merv Shaw, Q.C., solicitor for the member.

**FACTS**

3. The facts are set out in the Agreed Statement of Facts and Admissions filed as Exhibit “P2” in the proceedings and can be summarized as follows:

(a) Jacob Robert Hoffart, hereinafter referred to as the “Member” is, and was at all times material to these proceedings, a practicing member of the Law Society of Saskatchewan, hereinafter referred to as the “Law Society” and accordingly is subject to the provisions of The Legal Profession Act, 1990, hereinafter referred to as the “Act”, and the rules of the Law Society of Saskatchewan.

(b) The Law Society became involved with the Member in the context of the Professional Standards Committee referral as a result of a complaint by Mr. N. Initially the focus was on the potential conflicts of interest relating to the Member’s involvement with Mr. N. and E.J. Mr. N and E.J. had a complex business and personal relationship fraught with conflict, the particulars of which are beyond the scope of this proceeding.

(c) Mr. Jeffrey Scott, Q.C., was assigned by the Law Society to conduct a review of the Member’s practice. During the course of Mr. Scott’s review of the Member’s practice, the Member advised that he had a file opened under a code name and that in the file there was a sealed envelope, which contained a memory card from a digital camera.

(d) The Member indicated that the purpose of the code name was twofold: 1) to hide the fact that the matter pertained to E.J.; and, 2) to hide the memory card from the RCMP.

(e) The Member indicated to Mr. Scott that he came into possession of the memory card after E.J. removed it from a covert surveillance camera that the RCMP had installed outside the house of Mr. N. The RCMP were investigating a series of issues relating to Mr. N and E.J. including allegations that E.J. had been unlawfully inside the residence of Mr. N and had removed certain contents.

(f) Subsequently, E.J. admitted to the RCMP that she had removed the camera and she returned it to them. She did not return the memory card and instead provided it to the Member to store.

(g) The Member accepted the memory card from E.J. with full knowledge that it could contain evidence that would incriminate E.J. and how she came into possession of same.

(h) On May 1, 2013, E.J. was charged with a number of Criminal Code offenses relating to theft and breaking and entering into Mr. N’s home. The Member continued to retain the memory card in his coded file. The Member did not view the contents of the memory card when he took possession of it, however, he acknowledges that he knew it could contain incriminating evidence that was relevant to the RCMP investigation and charges.

(i) The Member intended to disclose the existence of the memory card to the crown prosecutor during a voir dire. The opportunity to disclose the existence of the memory card never arose as the charges against E.J. were dropped prior to trial, as Mr. N had passed away.

#### **SUBMISSIONS ON SENTENCE**

4. Mr. Huber, counsel for the Investigation Committee and Mr. Shaw, counsel for the Member, submitted a joint submission to the Hearing Committee in respect of a sentence consisting of a six week suspension commencing November 21, 2016 to January 2, 2017 inclusive and an order to pay costs in the amount of \$2,510.00.

5. The Committee was provided with three decisions from the Law Society which included *Law Society of Upper Canada v. Brown*, [1997] L.S.D.D. No. 93, *Barreau du Quebec (Assistant syndicates) v. Naim* (2013) [UNOFFICIAL TRANSLATION], and *Law Society of Saskatchewan v. Kirkham*, [1999] L.S.D.D. No. 19 [Decision on criminal obstruction charges is included but will not be referenced].

6. In *Law Society of Upper Canada v. Brown* the member was fined \$5,000.00 and ordered to pay \$3,000.00 in costs, and given a reprimand as a result of permitting a witness to testify at trial using a false identity. In support of the reprimand and the fine in the Brown case, the Committee indicated as follows, at paragraph 13:

a. In summary, the Committee sees the following as mitigating circumstances which support the recommended penalty:

1. The Solicitor understands that what he did was wrong and has expressed his remorse. The conduct was out of character for this senior and well respected member of the profession with an unblemished record, apart from this matter.
2. There was no monetary gain to the Solicitor as found by the trial judge at his criminal trial.
3. The Solicitor had an honest belief, although wrong, that he had fairly balanced the competing ethical obligations.
4. There is no concern with respect to specific deterrence.

7. In *Barreau du Quebec (Assistant syndicates) v. Naim* (2013) [UNOFFICIAL TRANSLATION] the member received a three month suspension. In that instance the member took two hard drives and hid them in two paint cans as well as attempted to leave the premises with files and documents under his jacket. The lawyer's actions were in direct violation of an order of the Court of which the lawyer was aware.

8. In *Law Society of Saskatchewan v. Kirkham*, the member was a prosecutor on a first degree murder trial before a jury. The prosecutor become aware of the fact that police had inappropriately contacted prospective jury members. Despite the fact that he knew this was inappropriate, he felt that he could exclude the impacted jurors without informing the Court. He

failed to disclose anything about the issue to the Court. Unbeknownst to Kirkham, two jurors who had been in contact with the police prior to the trial made it onto the jury. This would not have happened if he had been candid with the Court. A new trial was required. Kirkham was suspended for six months. He was charged with obstruction of justice, but was ultimately acquitted.

### **PARTICULARS OF THE CONDUCT**

9. The Member was fully aware that he had taken possession from his client, E.J., a memory card that had been obtained from a police camera and that it, in all likelihood, contained incriminating evidence as a result of the RCMP investigation.

10. The Member did not avail himself of an opportunity to obtain advice from legal counsel in respect of his taking possession of incriminating evidence contrary to Section 4.01(2.1) of the Code of Professional Conduct, which states a lawyer must not counsel or participate in concealment, destruction or alteration of incriminating physical evidence or otherwise acts or as to obstruct or attempt to obstruct the course of justice.

### **SENTENCE**

11. The Committee's sentence has been determined in light of the following:

- a. The submissions made and the representations of the Member's counsel of his clear remorse and acknowledgment of the Member's wrong doing;
- b. The fact that this was an isolated event in a career spanning 42 years;
- c. The fact that there was no personal benefit to the Member, but rather a clear lack of knowledge and direction in respect of the dealing with incriminating physical evidence, and
- d. The joint submission on sentencing provided at the Hearing.

12. The Hearing Committee agrees that it has a duty to consider and accept a jointly recommended submission on sentencing unless it falls outside of the range of available sentencing options. The Hearing Committee notes *Law Society of Saskatchewan v. Wilson*, 2011 SKLSS 8, which cites and follows *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, in this regard.

13. In addition, the matter came to light as a result of the Member, admitting his conduct to the Practice Advisor, including the circumstances in respect of him coming into possession of the memory card removed from the police digital camera.

14. Therefore, the Hearing Committee finds the Member guilty of the charge set out in the Formal Complaint and imposes the following sentence consistent with the joint submission on penalty advanced by his counsel and counsel for the Conduct Investigation Committee:

1. The Member is suspended for a period of six weeks commencing immediately to the 2nd of January, 2017 inclusive, and
2. The Member shall pay costs in the amount of \$2,510.00 within 30 days of the date of this decision.

Dated this 21st day of November, 2016.

“David K. Rusnak, Q.C., Chair”  
David K. Rusnak, Q.C., Chair

“Perry Erhardt, Q.C.”

“Ron Barsi”

### **AGREED STATEMENT OF FACTS AND ADMISSIONS**

**In relation to the Formal Complaint dated April 20, 2016, alleging the following:**

**THAT JACOB ROBERT HOFFART, of the City of Swift Current, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:**

- 1. Did, in connection with his client E.J., participate in the concealment of physical evidence so as to obstruct or attempt to obstruct the course of justice.**

#### **JURISDICTION**

15. Jacob Robert Hoffart (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 (hereinafter 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.

16. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June April 20, 2016. Attached at **Tab 2** is a copy of the Formal Complaint along with proof of service. The Member intends to plead guilty to the allegation set out in the Formal Complaint.

#### **BACKGROUND OF COMPLAINT**

17. The Law Society became involved with the Member in the context of a Professional Standards Committee referral brought on by a complaint by Mr. N. Initially the focus was on potential conflicts of interest relating to the Member’s involvement with Mr. N and E.J. Mr. N and E.J. had a complex business and personal relationship fraught with conflict, the particulars of which are beyond the scope of this proceeding.

18. The referral to the Professional Standards Committee was viewed as the appropriate response to the conflict of interest concerns. During the Professional Standards Review by Jeffery Scott, Q.C., the issues giving rise to the current Formal Complaint came to light.

#### **PARTICULARS OF CONDUCT**

19. In the course of Mr. Scott's review of the Member’s practice, and the files of Mr. N and E.J., Mr. Scott was asked by the Member if he wanted to hear about his "coded" file. The

Member produced a file from a box which was opened under the name "Morris Blue Jay". Morris Blue Jay does not exist. The name was a "code name" for a file opened in relation to E.J. Attached at **Tab 3** is the Member's detailed statement as to why he chose the name "Morris Blue Jay" for the file in question.

20. This file was opened on April 22, 2013. Stapled to the inside of the file folder was a sealed envelope. When asked by Mr. Scott what was inside the envelope, the Member indicated that the envelope contained a memory card from a digital camera.

21. The statement from the Member indicated that the purpose of the "coded name" was to hide the file pertaining to E.J. and the memory card from the RCMP.

22. E.J. came to be in possession of the memory card after she removed a covert surveillance camera that the RCMP installed outside the residence of Mr. N. The RCMP were investigating a series of issues relating to Mr. N and E.J. including allegations that E.J. had been unlawfully inside the residence of Mr. N and had removed certain contents.

23. Subsequently, E.J. admitted to the RCMP that she had removed the camera and she returned it to them. She did not return the memory card, and instead gave it to the Member to store.

24. The Member accepted the memory card from E.J. with full knowledge of where it came from and knowing that it could contain evidence that would incriminate E.J. He placed it on the code named file with the intention of concealing it from the RCMP should they obtain a warrant to search his office.

25. On May 1, 2013, E.J. was charged with a number of Criminal Code offences relating to theft and breaking and entering in relation to Mr. N and his home. The Member continued to retain the memory card on his code named file. While the Member did not review the contents of the memory card when he took possession of it, he knew that it could contain incriminating evidence that was relevant to the RCMP investigation. He knew that the memory card was, at very least, evidence pertaining to the theft of the surveillance camera by E.J.

26. The Member indicated to Mr. Scott that it was his intention to disclose the existence of the memory card to the crown prosecutor during a *voir dire*. This plan was ill advised and did not comply with the Member's obligations pursuant to the Code of Conduct. The opportunity to disclose the existence of the memory card never arose as the charges against E.J. were dropped prior to trial. Mr. N has since passed away.

27. When Mr. Scott became aware of the Member's actions, he directed the Member to seek legal advice in relation to his being in possession of real evidence of a crime. Mr. Scott asked the Member to view the contents of the memory card with him and the memory card did contain images from outside of the residence of Mr. N.

28. The Member sought his own legal advice and on or about April 17, 2015 (two years after coming into possession of the memory card), he confirmed with Mr. Scott that he provided the

memory card to his lawyer with instructions to provide the memory card to the authorities in a plain unmarked envelope inside a larger envelope addressed to the prosecutor's office. No return address or additional information was provided. The lawyer suggested that the memory card be wiped of finger prints before it was put in the mail and sent out of the office. The Member agreed. He did not alter or delete the contents of the memory card.

**PRIOR HISTORY**

29. The Member has no prior discipline history.