



The Law Society of Saskatchewan

MATHIEU SIROIS

HEARING DATE: April 15, 2015

DECISION DATE: June 9, 2015

Law Society of Saskatchewan v. Sirois, 2015 SKLSS 4

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF MATHIEU SIROIS,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Members of the Hearing Committee: David Chow, Chair
Heather Laing, Q.C.
Judy McCuskee
Counsel: Timothy Huber
for the Conduct Investigation Committee
Counsel for Mathieu Sirois: David Brundige, Q.C.

INTRODUCTION

1. Mathieu Sirois was the subject of an Amended Formal Complaint dated April 10th, 2015 alleging that his conduct was unbecoming of a lawyer in that he did:

1. **Fail to practice in a competent manner by:**
 - a) **Signing blank trust cheques for use by his support staff when he was away from the office;**
 - b) **Fail to supervise support staff adequately, or at all, such that his support staff were left to conduct legal files (primarily real estate matters) with little or no involvement from him; and**
 - c) **Fail to comply with or make himself aware of the Client Identification Rules imposed by the Law Society of Saskatchewan.**

2. **Fail to act in a conscientious diligent and efficient manner in relation to his lender client by:**
 - a) **Relying upon a Power of Attorney that was invalid;**
 - b) **Allowing a third party to execute mortgage documents on behalf of his client;**

- c) **Failing to comply with requirements imposed by his lender clients surrounding the use of a Power of Attorney;**
- d) **failing to inform them of the fact that mortgage documents for his clients were signed by a third party; and**
- e) **Failing to inform them of the fact that a Homestead Affidavit that he commissioned, purporting to be signed by his client, was actually signed by a third party.**

2. Mr. Sirois entered a plea of guilty to the amended charges, appended hereto, at the outset of the hearing conducted April 15th, 2015 by telephone conference call.

3. An Agreed Statement of Facts and Admissions dated April 13th, 2015 was filed by counsel, a copy of which is appended to this decision.

BACKGROUND

4. The facts can be summarized as follows:

- a) Mr. Sirois became a “solo” practitioner in October of 2009. By virtue of the Law Society of Saskatchewan’s solo practitioner policy, Mr. Sirois was visited by Jeff Scott, Law Society Practice Advisor, on several occasions beginning in the summer of 2011;
- b) Mr. Sirois’s practice was primarily in the areas of real estate conveyancing and immigration work;
- c) Mr. Sirois had the benefit of employing a highly skilled support staff member that was heavily involved in the real estate portion of Mr. Sirois’s practice;
- d) Shortly after Jeff Scott’s visits to Mr. Sirois’s office began, Mr. Sirois’s highly skilled support staff member left Mr. Sirois’s employment. Mr. Sirois’s practice suffered as a result of her departure;
- e) In October of 2011, Mr. Scott discovered the extent of the problems associated with Mr. Sirois’s practice; and
- f) Mr. Sirois was placed on interim suspension on November 1st, 2011. Approximately four weeks after having been suspended, Mr. Sirois wrapped-up his solo practice and entered into an undertaking with the Law Society that allowed him to practice under the supervision of David Brundige, Q.C. A copy of the undertakings dated November 29th, 2011 is appended to this decision.

ALLEGATIONS

5. The particulars of the conduct which resulted in the charges set out in the Amended Formal Complaint of April 10th, 2015 are as follows:

- a) Allegation #1 arose during Mr. Scott's second visit to Mr. Sirois on July 7th, 2011. Mr. Scott discovered that Mr. Sirois was in the habit of signing blank cheques on his trust account for real estate transactions for Mr. Sirois's staff members to utilize during periods of Mr. Sirois's absence from the office;
- b) During a visit by Mr. Scott on July 19th, 2011, it was discovered that Mr. Sirois was not complying with the mandatory Law Society of Saskatchewan Client Identification and Verification Rules;
- c) As part of a file review conducted by Mr. Scott on October 21st, 2011, it was discovered that Mr. Sirois had failed to protect his lender client on a real estate transaction by neglecting to prepare and register a mortgage prepayment schedule. The Solicitor's Report to the lender client claimed that the repayment schedule had been completed. The lender discovered the deficiency and directed Mr. Sirois to prepare and register an amendment. Mr. Sirois's assistant was left to deal with the amendment and to correspond with both the lender client and the purchasing client. Mr. Sirois was not aware of the missing prepayment schedule. In short, Mr. Sirois had not provided adequate supervision of his support staff in carrying out the real estate transaction;
- d) On another real estate file, Mr. Sirois was retained to represent both the purchaser and vendor on a farm real estate transaction. The agreement as well as several other documents were prepared and supplied to the client by Mr. Sirois's support staff member. Mr. Sirois had no contact with the clients and had no knowledge of the file; and
- e) Allegation #2 and Allegation #3, which was not specifically enumerated in the Amended Formal Complaint but was set out in the Agreed Statement of Facts and Admissions, surrounded Mr. Sirois's involvement in two real estate transactions whereby Mr. Sirois facilitated the signing of mortgage documentation and a homestead affidavit by the Power of Attorney rather than the client. Mr. Sirois did not follow the policy and procedure imposed by his lender client for mortgages signed by a power of attorney and Mr. Sirois led his lender client to believe that the documentation was signed by the client rather than the Power of Attorney.

ORAL SUBMISSIONS ON SENTENCING

6. Brief oral arguments were made during the conference call hearing. Neither counsel submitted written material apart from the Agreed Statement of Facts and Admissions dated April 13th, 2015.

7. Counsel for the Conduct Investigation Committee noted that Mr. Sirois had no prior discipline history since being called to the Bar in 2007. He conceded that, although Mr. Sirois's conduct amounted to a serious lack of professional standards, Mr. Sirois had been able to demonstrate corrected and remediated behaviour, including significantly improved practice management, in the three to four years since the offences were initially identified.

8. Counsel for the Conduct Investigation Committee sought a formal reprimand; a fine of \$500.00 and costs in the amount of \$4,920.00.

9. Mr. Huber suggested that if it were not for Mr. Sirois's demonstrated improvement in practice management and professional standards since the imposition of practice restrictions on Mr. Sirois in 2011, the Conduct Investigation Committee would have sought a more substantial penalty than a reprimand, small fine and costs.

10. Counsel for Mr. Sirois agreed with the suggested reprimand penalty but argued that the fine and costs should be waived or reduced to no more than a total of \$1,000.00.

11. In his argument to justify a reduced fine and costs, Mr. Brundige pointed to the significant financial burden suffered by Mr. Sirois during his 4-6 week interim suspension in 2011 and the subsequent 3.5 years that he has remained under practice restrictions while this matter has very slowly made its way through the various committees of the Law Society of Saskatchewan.

12. No specifics of the alleged financial burden on Mr. Sirois were provided other than Mr. Brundige advised that at least one major chartered bank continues to refuse to deal with Mr. Sirois in his real estate practice while Mr. Sirois remains under practice restrictions.

13. Further, Mr. Brundige suggested that Mr. Sirois has been tainted over the last 3.5 years with the stigma of being bound by practice restrictions and under formal charges by the Law Society of Saskatchewan for conduct unbecoming.

14. Mr. Brundige argued that the inordinate delay in bringing this matter before this Hearing Committee amounts to a breach of procedural fairness for which a reduction in the recommended fine and costs is an appropriate remedy.

15. No detailed explanation was provided by Mr. Huber for the overall delay in bringing this matter before this Hearing Committee.

16. Mr. Huber did comment on general periods of delay and referenced the timeline in the Statement of Costs exhibited as P3. Mr. Huber attributed an unspecified amount of the delay in the lengthy process of the investigation, investigation review and bringing the matter before this Hearing Committee to the appointment of key committee members to the Saskatchewan Courts.

17. There was no explanation however from Mr. Huber for the approximately 26 months that passed between lifting of the suspension in early December, 2011 and the Report from the Law Society's Conduct Investigation Committee in February, 2014. Similarly, there was no evidence from either counsel as to what an appropriate amount of time would be between lifting a suspension and finalization of a report from the Conduct Investigation Committee in similar cases within Saskatchewan or within other jurisdictions.

18. Mr. Huber cited *Wachtler v. College of Physicians and Surgeons of Alberta*, [2009] A.J. No. 347, in his submission that an appropriate penalty for Mr. Sirois was a reprimand, a \$500.00 fine and costs of \$4,920.00.

19. In *Wachtler*, the Council of College of Physicians and Surgeons of Alberta had taken 21 months to notify Dr. Wachtler of allegations made against him by his former patients. The time from complaint to hearing totaled 53 months. In total, approximately 7 years had elapsed between the initial complaint and the Council rendering its decision. The Alberta Court of Appeal was asked to overturn the finding of conduct unbecoming and the resulting sanction on a number of grounds including inordinate delay constituting a breach of procedural fairness and abuse of process. The Alberta Court of Appeal reduced the period of suspension imposed on Dr. Wachtler by the Council and set aside the award of costs.

DECISION

20. Mr. Huber and Mr. Brundige submitted a joint recommendation on a reprimand but Mr. Brundige disagreed on the suggested fine and cost amount sought by the Conduct Investigation Committee.

21. It is clear that Mr. Sirois's conduct leading up to the interim suspension in November of 2011, amounted to a serious lack of professional standards and that the charges of conduct unbecoming a lawyer, to which Mr. Sirois has entered guilty pleas, are well founded. What was particularly disturbing were the circumstances surrounding allegation #2 and how Mr. Sirois's lender client may have been prejudiced by the inappropriate use of an invalid Power of Attorney in completing two real estate transactions.

22. Mr. Sirois has illustrated favourable behaviour and improvement over the last 3.5 years. The delay in bringing this matter to a final hearing has worked in Mr. Sirois's favour in so much that the Committee, having taken notice of the *Wachtler* decision, is prepared to accept the joint submission of a formal reprimand for conduct which, in other circumstances, might warrant a more severe penalty.

23. It is clear that this matter took a long period of time to make its way through the various committees of the Law Society of Saskatchewan. No evidence was presented however to indicate that the period of time was inordinate or out of the ordinary when compared to similar cases before the Law Society of Saskatchewan or similar cases before regulatory bodies in other jurisdictions. As previously mentioned, the Conduct Investigation Committee has sought a reprimand for behaviour that may have warranted a request for a more serious penalty. Further, the Bill of Costs filed by Mr. Huber on April 15th, 2015 does not illustrate that there was any increase or duplication in the costs associated with the investigation or these proceedings as a result of any potential delay.

24. The mitigating stance taken by counsel for the Conduct Investigation Committee on penalty should not be seen as justification for the amount of time that this matter took to proceed to hearing. In general, the Law Society must strive toward processing these matters in a more timely fashion.

25. It is the decision of this Hearing Committee that Mr. Sirois receive a formal reprimand, pay a fine of \$500.00 and costs in the amount of \$4,900.00. Finally, Mr. Sirois shall be released from the practice restrictions contained in his undertakings of November 29th, 2011.

DATED this 9TH day of June, 2015

"David M. Chow"
Chair

"Heather Laing, Q.C."
Heather Laing, Q.C.

"Judy McCuskee"
Judy McCuskee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated April 10, 2015, alleging the following:

THAT MATHIEU SIROIS, of Regina, in the Province of Saskatchewan did:

- 1. Fail to practice in competent manner by:**
 - a. Signing blank trust cheques for use by his support staff when he was away from the office;**
 - b. Failing to supervise support staff adequately, or at all, such that his support staff were left to conduct legal files (primarily real estate matters) with little or no involvement from him (files 510 and 571); and**
 - c. Fail to comply with or make himself aware of the Client Identification Rules imposed by the Law Society of Saskatchewan;**

- 2. Fail to act in a conscientious diligent and efficient manner in relation to his lender client by:**
 - a. Relying upon a Power of Attorney that was invalid;**
 - b. Allowing a third party to execute mortgage documents on behalf of his client (file 521); and**
 - c. Failing to comply with requirements imposed by his lender clients surrounding the use of a Power of Attorney (files 521 and 539);**

 - a. Failing to inform them of the fact that mortgage documents for his clients (the lender's debtors) were signed by a third party (file 521); and**

- b. Failing to inform them of the fact that a Homestead Affidavit that he commissioned, purporting to be signed by his client, was actually signed by a third party (file 521);**

JURISDICTION

26. Mathieu Sirois (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”).

27. The Member is currently the subject of an Amended Formal Complaint dated April 10, 2015. The Amended Formal Complaint is comprised of the allegations noted above. The original Formal Complaint was served upon the Member on May 5, 2014. Attached at **Tab 1** is a copy of the original Formal Complaint along with proof of service. The Amended Formal Complaint dated April 10, 2015 was served upon the Member on April 10, 2015. Attached at **Tab 2** is a copy of the Amended Formal Complaint along with proof of service. The Member intends to plead guilty to the allegations set out in the Amended Formal Complaint.

BACKGROUND OF COMPLAINT

28. The Law Society first became involved with the Member in the context of the Law Society program whereby “new” solo practitioners receive a visit from Practice Advisors. These visits are intended to serve as a check in relation to the systems and office management practices of new solo practitioners and to identify best practices for these members in a proactive way with a view to avoiding complaints in the future.

29. The Member became a solo practitioner in October of 2009. As part of the Law Society initiative, Practice Advisor, Jeffrey Scott attended the Member’s offices on several occasions in 2011 starting on June 7 of that year. The Member’s practice was primarily focused on real estate work (60%). The balance of his practice was mainly devoted to immigration work. Mr. Scott observed during his first two meetings that the Member had in his employ a highly experienced real estate assistant I.B. who was heavily involved in the Member’s real estate practice.

30. The first few visits to the Member’s office revealed a variety of issues noted below.

31. On or about August 31, 2011, I.B. left the Member’s firm. The Member’s practice quickly began to spiral. The extent of the problems associated with the Member’s practice was discovered by Mr. Scott during an October 21, 2011 file review in relation to real estate matters handled by the Member after the departure of I.B. The allegations noted above arose out of this file review.

PARTICULARS OF CONDUCT

Allegation #1

32. During Mr. Scott’s second visit to the Member’s office on July 7, 2011, Mr. Scott met with each of the Member’s staff including I.B. During this meeting it came to the attention of Mr. Scott that the Member had a practice of signing trust cheques in blank prior to vacations and

other absences from the office. Support staff, including I.B. would fill out the amounts and the dates on the trust cheques as required in connection with various real estate transactions being process while the Member was away. In signing trust cheques in blank prior to absences from his office, the Member abrogated responsibility for his trust account and the client funds therein. The Member acknowledged that this practice was inappropriate. On the advice of the Practice Advisor the Member discontinued the signing of trust cheques in blank and instead began engaging another lawyer in Regina to act as his “relief” when he was away from the office so that his trust cheques could be signed by a lawyer in an appropriate way.

33. In a subsequent meeting on July 19, 2011, Mr. Scott became aware that the Member was not complying with mandatory Law Society Client Identification and Verification Rules. The Member agreed to familiarize himself with these requirements and comply.

34. As part of the October 21, 2011 file review, Mr. Scott reviewed file 510. On that file the Member was retained to act for the purchasers with respect to a purchase of a house and the preparation and registration of a mortgage on behalf of the lender. The review by Mr. Scott revealed a series of problems with the file. The Member failed to prepare and register a required pre-payment schedule as per the bank’s instructions [**Tab 3**]. A Solicitor’s Report was then provided to the bank confirming that all instructions, including the registration of the prepayment schedule had been completed [**Tab 4**]. This was not correct. The bank communicated this deficiency to the Member along with the need to complete an Amending Agreement which included the appropriate prepayment schedule. A letter was written to the purchasers on the file describing the need to execute the Amending Agreement. This letter was written by J.J., the Member’s new real estate assistant. The Member did not review the letter before it was sent to the clients. Follow up correspondence was forthcoming from the bank and again J.J. responded and advised that the Amending Agreement had been forwarded to the clients for signature.

35. When asked about file 510 by Mr. Scott, the Member was only vaguely familiar with the file and what had occurred. He was not aware of the fact that the prepayment schedule had not be included in the initial registration. The Member had not carefully reviewed the instructions from his lender client. He did not provide adequate supervision in relation to the work done by his staff. As a result he provided an inaccurate report to his lender client. A continued review by Mr. Scott revealed that an Amending Agreement provided to the clients’ for signature did not include a copy of the prepayment schedule to which it pertained. This is another detail that would have been uncovered had the Member engaged in appropriate supervision of his staff or a review of their work. It should be noted that Mr. Sirois was on vacation during this time period and a few days subsequent to his return Mr. Scott attended to his office to review the files, in particular file 510.

36. On an unrelated file; file 571, the Member was retained to represent a vendor and purchaser of farmland. By letter dated October 6, 2011 an agreement was provided to the clients by J.J. Thereafter a variety of additional documents were prepared by J.J. in relation to the transaction. The Member was on vacation at the time. The real estate matter was complicated by the existence of an old mortgage and tax lien on the title. The Member had no knowledge of the file and had no contact with the clients. Only J.J. had contact with the clients. The Member

failed to supervise J.J. in an effective manner and failed to establish appropriate limits on her involvement with files while he was away from the office or at all.

Allegations #2 and #3

37. Mr. Scott's file review included a review of file 521. In relation to this matter, and other related files, the Member was retained to represent Z.H. in the purchase of properties in Regina. Z.H. was resident in China. To finance the purchases Z.H. obtained a mortgage and the Member received instructions from the bank accordingly. It came the attention of Mr. Scott that mortgage documents signed in relation to this matter were not signed by Z.H. but by another party S.W., a man who purported to be the Power of Attorney for Z.H. The Power of Attorney document that the Member had on file was defective [Tab 5]. When S.W. signed the mortgage documents, he did so as Z.H. giving no indication whatsoever that he was not Z.H. but rather his purported Power of Attorney. Further, in connection with the Mortgage, S.W. signed a homestead affidavit as Z.H. with no indication that he was instead acting as a purported Power of Attorney. The Member signed as a witness in relation to both the mortgage and the homestead affidavit that had been inappropriately executed by S.W. as Z.H. acting on the invalid Power of Attorney.

38. The Member had not reviewed the instructions from the bank in relation to use of powers of attorney documents. The Member was obliged pursuant to the instructions to identify when a mortgage was being signed by a power of attorney, to provide a copy of the power of attorney document and to provide an opinion as to its validity. The Member did none of these things and instead allowed the bank to believe that the mortgage documents had been executed by Z.H. and that he had witnessed Z.H. sign them. Due to the Member's conduct on the Z.H. matter, the bank had no way of knowing that someone other than Z.H. had signed the mortgage. Further, the reality of the situation was that all of the documents prepared in relation to the mortgage were invalid as a result in the manner in which they were signed.

39. In relation to another file; file 539, the Member once again relied on a Power of Attorney that was invalid on its face. The Member again failed to provide a copy of the Power of Attorney to the bank or his opinion that the Power of Attorney was valid.

PRIOR HISTORY

40. The Member has no prior discipline history.