



**The Law Society of Saskatchewan**

**JAMES NIEL HALFORD**

**HEARING DATE: March 6, 2014**

**DECISION DATE: April 9, 2014**

***Law Society of Saskatchewan v. Halford, 2014 SKLSS 6***

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF JAMES NIEL HALFORD,  
A LAWYER OF FORT QU'APPELLE, SASKATCHEWAN**

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

Members of the Hearing Committee: Sanjeev Anand, Q.C. (Chair)  
Ron Parchomchuk  
Lorne Mysko

Counsel: Timothy Huber for the Conduct  
Investigation Committee

Member: (self-represented) James Niel Halford

**INTRODUCTION**

1. On March 6, 2014, before the Hearing Committee of the Law Society of Saskatchewan, James Niel Halford (the “Member”) pled guilty to allegations of conduct unbecoming a lawyer particularized as follows:

- i. He did enter into or continue a business transaction with his clients, G.S., L.S. and Company P., when his interests and the interests of G.S., L.S. and Company P. were in conflict;
- ii. He did enter into or continue a business transaction with his clients, G.S., L.S., and Company P., without providing his clients with a reasonable opportunity to seek independent legal advice in relation to the transaction;
- iii. He did enter into or continue a business transaction with his clients, G.S., L.S. and Company P., without obtaining the written consent of G.S., L.S. and Company P. in relation to the presence of a conflict of interest between himself and G.S., L.S. and Company P.; and

- iv. He did in relation to the business transaction with G.S., L.S. and Company P., conduct himself in a manner that made it difficult for G.S., L.S. and Company P. to distinguish whether he was acting in his personal capacity or in his professional capacity as their legal counsel.

2. The Hearing Committee accepted the guilty pleas and convened a sentencing hearing by way of conference call on the 6th of March, 2014. At the conclusion of the hearing, the Hearing Committee indicated its intention to reserve its decision on sentence and render written reasons for the penalty crafted.

## **BACKGROUND**

3. An agreed statement of facts was filed in relation to this matter and the agreed statement of facts is attached as an appendix to this sentencing decision. Nevertheless a brief summary of the facts has been provided below.

4. The Member entered into a business relationship with his clients, G.S. and L.S., and the business relationship focused upon a joint purchase of a commercial building in Fort Qu'Appelle. The clients had come to the Member to conduct the real estate transaction, having initially intended to purchase this property themselves. Ultimately, the Member and his clients agreed to enter into a joint venture for the purchase of the building through the creation of Company P. and it was Company P. that actually purchased the building. The shares of Company P. were owned 50 percent by the Member and 50 percent by the clients.

5. In connection with the incorporation of Company P., the Member drafted a shareholder's agreement. Unfortunately, the agreement lacked clarity in relation to many matters, including how either party could exit the arrangement in an orderly fashion. This uncertainty led to conflict and litigation between the Member and his clients.

6. Nevertheless, counsel for the Conduct Investigation Committee did not characterize the quality of the agreement as the real problem. The problematic aspect of this situation was that the agreement was prepared by the Member and entered into with his clients without independent legal advice in a situation that gave rise to a conflict of interest between the Member and his clients.

7. The Member does not have any prior findings of conduct unbecoming a lawyer on his record. However he has been the subject of a professional standards referral as well as another complaint that resulted in an informal conduct review. Both of these matters took place quite some time ago and neither of them involved a conflict of interest situation.

## **SUBMISSIONS ON SENTENCE**

8. Counsel for the Conduct Investigation Committee and counsel for the Member made a joint submission on sentence. The joint submission was that the Member should receive a global disposition consisting of a formal reprimand and a fine in the amount of \$500.00. In addition, it was agreed that the Member should pay costs in the amount of \$2,195.00.

9. In support of the joint submission, counsel for the Conduct Investigation Committee referred the Hearing Committee to the following four Saskatchewan cases: *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, and *Law Society of Saskatchewan v. Braun*, Discipline Decision #09-01 (6 March 2009). These cases illustrate the range of penalty for cases involving conflict of interest between a lawyer and a client in business dealings that do not involve serious financial losses to the client. At the low end of the range is a penalty consisting of a reprimand and costs. At the high end of the range is a disposition consisting of a reprimand, costs and a fine of up to \$500.00.

10. Counsel for the Investigation Committee made reference to a number of other relevant facts. He referred to the fact that the Member has never been before a discipline committee in his over thirty years of practice. Counsel for the Investigation Committee also pointed out that the Member was very cooperative with the Law Society in dealing with this matter and in facilitating the Agreed Statement of Facts.

11. In the end, counsel for the Investigation Committee submitted that the joint submission was within the range of reasonable outcomes as represented by the four cited cases. Moreover, it was suggested that the disposition recommended would provide sufficient specific deterrence for the Member. In addition, there was an assertion that the penalty recommended would provide a measure of general deterrence by serving as a cautionary tale about the perils of lawyers entering into business relationships with their clients in the absence of those clients obtaining independent legal advice.

12. The Member indicated that he felt deep remorse for his conduct and that there was no fraud or dishonesty on his part involved. 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.

## **DECISION**

13. Given the range of penalty imposed in cases that are factually similar to the one involving the Member as well as the mitigating factors present in this case, the joint submission pertaining to penalty is reasonable and the Hearing Committee makes the order sought.

## **ORDER**

14. It is ordered that the Member be subject to a formal reprimand and that he pay a fine in the amount of \$500. In addition, the Member shall pay the costs of this proceeding in the amount of \$2,195. The costs and fine shall be payable immediately.

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"Sanjeev Anand, Q.C."  
Chair

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April 7, 2014  
Date

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"Ron Parchomchuk"

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April 8, 2014  
Date

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"Lorne Mysko"

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April 9, 2014  
Date

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

In relation to the Formal Complaint dated June 13, 2013, alleging the following:

THAT JAMES NIEL HALFORD, of Fort Qu'Appelle, in the Province of Saskatchewan:

1. did enter into or continue a business transaction with his clients, G.S., L.S. and Company P., when his interests and the interests of G.S., L.S. and Company P. were in conflict;
2. did enter into or continue a business transaction with his clients, G.S., L.S. and Company P., without providing his clients with a reasonable opportunity to seek independent legal advice in relation to the transaction;
3. did enter into or continue a business transaction with his clients, G.S., L.S. and Company P., without obtaining the written consent of G.S., L.S. and Company P. in relation to the presence of a conflict of interest between himself and G.S., L.S. and Company P.; and
4. did in relation to the business transaction with G.S., L.S. and Company P., conduct himself in a manner that made it difficult for G.S., L.S. and Company P. to distinguish whether he was acting in his personal capacity or in his professional capacity as their legal counsel.

### **JURISDICTION**

15. James Niel Halford (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").

16. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June 13, 2013. The Formal Complaint is comprised of the allegations noted above. The original Formal Complaint was served upon the Member on June 25, 2013. Attached at Tab 1 is a copy of the original Formal Complaint along with proof of service. The Member intends to plead guilty to the four allegations set out in the Formal Complaint.

### **BACKGROUND OF COMPLAINT**

17. The Law Society began an investigation into the Member after receipt of a complaint dated November 18, 2010 from Mr. and Mrs. S. The complaint arose from the Member's involvement with Mr. and Mrs. S. surrounding the ownership and occupation of a commercial building in Fort Qu'Appelle Saskatchewan.

### **PARTICULARS OF CONDUCT**

18. In August 2007, Mr. and Mrs. S., through their corporation Company P, purchased a commercial building at 181 Broadway Street in Fort Qu'Appelle (the "Building"). Mr. and Mrs. S. owned Company P. The Member represented Mr. and Mrs. S. and Company P as the

purchasers. He also represented the vendors and the mortgage lender. Mrs. S. had been a tenant of one half of the Building prior to deciding to purchase it. Mrs. S. operated a clothing store.

19. Prior to the sale transaction being completed, the Member and Mr. and Mrs. S. through Company P decided to enter into an agreement surrounding the use and occupation of the building. The Member planned to relocate his law office to the remaining portion of the Building not being used by Mrs. S.

20. The terms of the arrangement are set out in a Shareholder Agreement prepared by the Member in August of 2007 between himself and Company P, attached hereto at Tab 2. The Shareholder Agreement contemplated the incorporation of a new numbered corporation ("New Co"). The New Co would have two equal shareholders, Mrs. S. and the Member. Both individuals would also be directors of New Co. Pursuant to the Shareholder Agreement, title to the newly purchased Building would be transferred to New Co.

21. The Shareholder Agreement also governed the operation of the Building, apportionment of expenses, payment of taxes, apportionment of Building space, the rights of the occupants of the building, the requirement that the space not be leased to competing businesses, resolution of disputes and each owner/tenant's right to access the other owner/tenant's portion of the Building, in case of emergency.

22. The Shareholder Agreement stated that the Member would "assume the responsibility" for repayment of \$150,000.00 of the \$180,000.00 Royal Bank mortgage being registered against the property in the original purchase in the name of Company P. Mrs. S. was required to repay the balance of the Royal Bank mortgage as well as another \$20,000.00 mortgage that had been registered. Repayment of the mortgages obtained to finance the purchase of the building was to occur by September 2012.

23. The Agreement required Mr. and Mrs. S. to convey title to the New Co. of which the Member owned a 50% share.

24. The Shareholder Agreement was prepared by the Member after a visit to the home of Mr. and Mrs. S. to discuss the matter. Mr. and Mrs. S provided information to the Member and he left with that information. A few hours later the Member returned to the home of Mr. and Mrs. S. with the Shareholder Agreement. The group had dinner and Mr. and Mrs. S signed the agreement before the Member left. He signed it afterward in the presence of his employee. At no time did Mr. and Mrs. S receive independent legal advice in relation to the Shareholder Agreement. The Member did not recommend that Mr. and Mrs. S. obtain independent legal advice or mention it in any way. Mr. and Mrs. S. did not acknowledge the existence of a conflict of interest or consent to it in writing or in any other manner.

25. Shortly after the Shareholder Agreement was signed, Mr. and Mrs. S. requested a change to the agreement including the payment by the Member of 30,000.00 upfront. The Member agreed and paid that amount. The "addendum" to the Shareholder Agreement is attached hereto at Tab 3.

26. The transaction placed the Member and Mr. and Mrs. S in a conflict of interest. Aspects of this conflict of interest manifested shortly after the Member moved into the Building. Within

18 months the Member sued Mr. and Mrs. S. and Company P in connection with the transaction and the Building. The claim was defended and a Counterclaim was issued. The Statement of Claim, Defence and Counterclaim and Defence to Counterclaim are attached hereto at Tab 4. The transaction placed the Member in a debtor/creditor relationship with Mr. and Mrs. S. In that relationship the Member's interests differed from those of his clients. Underscoring this divergence of interests was the fact that almost immediately, as early as the eve the Member was slated to move into the Building, extremely unhappy differences arose between the parties.

27. In the Member's dealings with Mr. and Mrs. S. through to the preparation and execution of the Shareholder Agreement, the Member failed to make it clear in what capacity he was acting. The Member states that he made assumptions as to his client's sophistication and as to their perception of his role in the transaction. The Member assumed that his clients would take care of themselves and that he was not being viewed as acting as legal counsel for Mr. and Mrs. S. in relation to the Shareholder Agreement, despite the fact that they were current clients of his and despite the fact that he prepared the Shareholder Agreement for them all to enter into.

28. The Member made the wrong assumptions in this regard. Mr. and Mrs. S. were unable to distinguish when the Member was acting for them in the context of the global transaction and when he was acting for himself, in a manner that was not intended to protect the interests of Mr. and Mrs. S. The Member acknowledges that he received no indication from Mr. and Mrs. S. that they ever believed that the Member was not acting as their lawyer at any time during the global transaction up to and including the execution of the Shareholder Agreement. The Member failed to make clear to his clients that he was not acting in their interests or as their lawyer in relation to the Shareholder Agreement aspect of the global transaction.

29. Ultimately, in August of 2011, the Member bought out Mr. and Mrs. S and Company P in relation to the Building and New Co. This occurred by way of a Share Purchase Agreement attached at Tab 5. Mr. and Mrs. S. and the Member were represented by their own legal counsel for the purposes of the subsequent agreement. Concurrent with the execution of the Share Purchase Agreement the parties executed a Settlement and Release Agreement in relation to all remaining issues including two separate Court of Queen's Bench legal actions. The Settlement and Release Agreement is attached at Tab 6.

#### **PRIOR HISTORY**

30. The Member was the subject of a referral to the Professional Standards Committee and an Informal Conduct Review, both in the year 2000.

31. The Member has no other discipline history.