



The Law Society of Saskatchewan

WILLIAM ROYDEN HOWE

November 13, 2012

Law Society of Saskatchewan v. Howe, 2012 SKLSS 8

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF WILLIAM ROYDEN HOWE,
A LAWYER OF REGINA, SASKATCHEWAN**

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

1. The Hearing Committee of the Law Society of Saskatchewan comprised of Joel Hesje, Q.C., as Chair, and Gregory Stevens, convened on November 13, 2012. Mr. Timothy F. Huber represented the Investigations Committee of the Law Society. Mr. Patrick W. Zawislak represented William Royden Howe (the “Member”). All parties took part by conference call.
2. Neither Mr. Huber nor Mr. Zawislak had any objections to the jurisdiction of the Hearing Committee, or the composition of the Hearing Committee.
3. The following documents were admitted by consent:
 - P1 - Notice of Hearing
 - P2 - Agreed Statements of Facts and Admissions
 - P3 - Statement of Costs
4. The amended Formal Complaint alleges that the Member is guilty of conduct unbecoming a lawyer in that he:

“Did through his associate, 599875 Saskatchewan Ltd., enter into or continue a debtor-creditor relationship with his clients, Mr. and Mrs. S, that included the preparation of an instrument wherein Mr. and Mrs. S provided a mortgage as security for a loan on their principal residence to 599875 Saskatchewan Ltd., without ensuring that Mr. and Mrs. S. received independent legal advice.”
5. The Member entered a plea of guilty on the charge set out in the amended Formal Complaint on the basis of an Agreed Statements of Facts and Admissions.

6. The Hearing Committee heard submissions from both counsel on sentencing then adjourned to consider the appropriate sentence. The hearing was reconvened and the decision on sentencing was delivered orally with written reasons to follow. These are those written reasons.

7. The sentence was imposed based on an Agreed Statement of Facts and Admissions. A copy of the Agreed Statement of Facts and Admissions are attached as an Addendum to these Reasons.

8. Counsel for both parties agreed that a reprimand was appropriate and that Mr. Howe should pay costs to the Law Society of Saskatchewan in the amount of \$1,645.00. Mr. Hubert suggested a small fine of \$300.00 should also be imposed. Mr. Zawislak submitted that the reprimand and order for payment of costs was an appropriate penalty and no fine should be imposed.

9. The Hearing Committee sees no reason to depart from what is in effect a joint submission that Mr. Howe should receive a reprimand and pay costs. The issue for determination is whether a fine should also be imposed.

10. The Hearing Committee was referred to three relatively recent Law Society of Saskatchewan discipline decisions: Dwayne Z. Braun (Discipline Decision #09-01, rendered March 6, 2009; William T. Johnston, 2011 SKLSS 7, rendered November 22, 2011; and Rodney Charles Simaluk, 2012 SKLSS 1, rendered June 1, 2012. These decisions all involved conflicts of interest.

11. In Braun, the lawyer prepared and registered a transfer of land into his name. The transfer was provided to satisfy a mortgage taken by the lawyer to secure a debt owed to the lawyer. The Hearing Committee concluded that the lawyer was guilty of conduct unbecoming in having the transfer executed in the absence of either independent legal advice or a waiver of such independent legal advice. The Committee imposed a fine of \$500.00 in addition to a reprimand and an order for payment of costs.

12. In Johnston, the lawyer failed to disclose that he had an interest in the vendor corporation while acting for a client in the purchase of a condominium. The lawyer did not obtain the consent of the client to his conflicting interest and did not provide the client with a reasonable opportunity to seek independent legal advice in relation to the transaction. The lawyer pled guilty and sentence was imposed on the basis of a joint submission. The lawyer received a reprimand and was ordered to pay costs. No fine was imposed.

13. In Simaluk, the lawyer entered into a debtor-creditor relationship with his client and prepared a mortgage wherein his client transferred an interest in land to him. The lawyer pled guilty and acknowledged he put himself in a position of conflict of interest in entering into a debtor-creditor relationship with his client, and that the mortgage served to transfer to him an interest in the client's property and this was done without the client having the benefit of independent legal advice. The member pled guilty and received a reprimand, a fine of \$300.00 and was directed to pay costs.

14. These cases establish that in addition to a reprimand a fine of up to \$500.00 must be considered. In Johnston, where no fine was imposed, the member had no prior findings of conduct unbecoming a lawyer on his record. In Braun, the member was concurrently sentenced on three separate, and apparently unrelated, charges. In Simaluk, the member had one prior finding of conduct unbecoming on his record.

15. There can be no doubt that the significant sanction in this case is the reprimand. The Member has practised law for approximately 35 years without any prior discipline record. He has now pled guilty to conduct unbecoming a lawyer and has tarnished an otherwise distinguished record of service. Both counsel acknowledge that there is little likelihood of a repeat offense. The imposition of a small fine would serve little general deterrence and the Hearing Committee sees further specific deterrence as unnecessary. As such, even the imposition of a small fine is unnecessary and inappropriate in the circumstances.

16. In reaching its decision, the Hearing Committee considered mitigating and aggravating factors. Mr. Huber acknowledged that the Member entered into the transaction with good intentions of assisting the clients. There does not appear to be any indication that the Member has attempted to take advantage of the clients. Mr. Zawislak indicated to the Hearing Committee that Mr. and Mrs. S were extremely pleased with the resolution achieved by the Member. He indicated that they were troubled to learn that the Member is facing discipline as a result of the transaction. It was also noted that the Member outlined in detail the nature of the transaction in a letter to the clients and suggested that they review the letter with their family. Unfortunately, the Member did not go further and advise them to obtain independent legal advice. The Member acknowledges this shortcoming by pleading guilty to the charge. It is also significant that the Member self-reported the transaction and that he has no prior discipline record.

17. The Committee does note the Member did receive some financial benefit from the transaction, and considers this an aggravating factor.

18. The Hearing Committee has concluded that the mitigating and aggravating factors in this case places it at the low end of the range of sanction established in the three earlier decisions.

19. For the foregoing reasons, the Hearing Committee orders that:

- (a) William Royden Howe receive a reprimand;
- (b) William Royden Howe shall on or before December 15, 2012, pay costs to the Law Society of Saskatchewan in the amount of \$1,645.00.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 28th day of November, 2012.

"Joel Hesje, Q.C."
Chair of the Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

20. In relation to the Formal Complaint dated November 18, 2011, as amended, alleging that he:

1. Did through his associate, 599875 Saskatchewan Ltd., enter into or continue a debtor-creditor relationship with his clients, Mr. and Mrs. S, that included the preparation of an instrument wherein Mr. and Mrs. S provided a mortgage as security for a loan on their principal residence to 599875 Saskatchewan Ltd., without ensuring that Mr. and Mrs. S. received independent legal advice.

JURISDICTION:

21. William Royden Howe (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.

22. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated November 18, 2011. The Formal Complaint is comprised of the allegation noted above, as amended. The original Formal Complaint was served upon the Member on November 20, 2011. 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. The Member intends to plead guilty to the allegation of conduct unbecoming as amended above.

BACKGROUND OF COMPLAINT:

23. The details of this complaint came to light as a result of the Member’s self-reported disclosure that he arranged for a mortgage loan to clients from his wife’s company during the 2009 fiscal year. This disclosure came in the context of the Member’s annual trust reporting materials that were submitted to the Law Society of Saskatchewan on March 16, 2010 by the Linka Howe Law Office. Law Society Auditor, John Allen, initiated a follow up process seeking further detail in relation to the loan.

PARTICULARS OF CONDUCT:

Count #1:

24. On March 16, 2010, the Member’s firm filed its TA-3 and TA-5S forms as required by the Rules of the Law Society of Saskatchewan.

25. Upon review of these forms, John Allen noted that under section 17. (a)(ii) “loaned money to a client[s] during the fiscal year”, the “yes” box had been ticked and the details indicated that the Member had loaned Mr. and Mrs. S, \$115,000.00. Attached at Tab 3 is the relevant excerpt from the trust reporting form.

26. In the course of the review, Mr. Allen informed the Member by letter dated June 21, 2010 that “all significant instances of ‘loans to clients’ are routinely reported to Complaints Counsel.” Mr. Allen made that referral and an investigation by complaints counsel ensued.

27. In the course of the Law Society’s investigation, it was determined that Mr. and Mrs. S were the parents of the Member’s legal assistant, T.S. The circumstances that precipitated the loan was the Member’s concern that the client’s realtors were attempting to take advantage of them coupled with the longtime relationship between T.S. and the Member.

28. T.S. informed the Member of her concerns regarding her parents, especially her father, Mr. S, who was 87 at the time and suffered from multiple health ailments that resulted in the need for him and his wife, age 64, to move to an assisted living facility. Mr. S was concerned about the cost of the facility and being able to provide for his wife in case of his death. Mrs. S. was also experiencing the onset of dementia.

29. Without consulting their daughter, T.S., who was also their Power of Attorney, Mr. S entered into a binding contract with a local realtor to sell the family home. The house was originally listed for \$159,000.00 (fair market value) in the summer of 2009. In September, Mr. S agreed to sell the home at a much reduced value of \$105,000.00 to the owners of the real estate agency.

30. T.S. believed that the realtor had taken advantage of her father and his situation by arranging to purchase the house at a deep discount.

31. T.S. turned to the Member for advice. The Member suggested that Ms. S speak to someone else but she declined as she wanted to deal with someone she knew and trusted.

32. That upon the request by the Member’s secretary to assist her parents, the Member explored and exhausted avenues of alternative financing of them including the prospect of their adult children purchasing the home or at very least assisting their parents in financing pending a sale of the property at fair market value. The Member also turned to other independent realtors to confirm that the fair market value was higher than the \$105,000.00 purchase price offered by the realtors. As it was not possible for either of the clients to secure financing, the Member agreed to accommodate them on a short term basis and in doing so approached his spouse’s company to determine if it could secure third party financing in order to re-lend to the clients pending sale of their property.

33. Once it was determined that third party financing could be arranged to accommodate the clients, on September 25, 2009, the Member sent a letter [Tab 4] to Mr. and Mrs. S in which he stated:

“It is obvious to the writer that your real estate agents have attempted to take advantage of yourselves and are in serious conflict of interest.”

34. The Member then proposed an alternative to proceeding with the sale to the realtor. The exact terms of the arrangement are set out in the September 25, 2009 letter. In short, the

Member offered to loan Mr. and Mrs. S. \$105,000.00 through his wife's holding company, 599875 Saskatchewan Ltd.; handle the cancellation of the pending sale agreement with the realtors and to tend to the listing of the property with a new realtor at a fair price. The loan would be repaid from the proceeds once the property sold. The Member thought that it would take between three and six months to sell the property. In exchange for this loan the Mr. and Mrs. S. to granted a mortgage to 599875 Saskatchewan Ltd. on the property in the amount of \$115,500.00 which included a fixed cost to Mr. and Mrs. S of \$10,500.00 on top of the principal loan amount of \$105,000.00. Mr. and Mrs. S. agreed to these terms.

35. Upon acceptance and direction by Mr. and Mrs. S, the Member prepared a mortgage in the amount of \$115,500.00 (\$105,000.00 in principal + \$10,500.00 lending fee). The mortgage showed interest at a rate of 0% per annum. This mortgage was executed by Mr. and Mrs. S. on October 10, 2009. A copy of the mortgage prepared by the Member and signed by Mr. and Mrs. S. in the Town of Fort Qu'Appelle in front of their Daughter T.S. is attached at Tab 5. Upon the mortgage being registered against the Mr. and Mrs. S property in the Land Titles Registry on October 23, 2009, a cheque in the amount of \$105,000.00 was issued to Mr. and Mrs. S. from 599875 Saskatchewan Ltd.

36. At no time prior to the execution of the mortgage and the acceptance of the terms of the transaction proposed by the Member did Mr. and Mrs. S. receive independent legal advice in relation to the transaction, nor did Mr. and Mrs. S. provide a waiver of independent legal advice.

37. In late September of 2009, roughly ten days prior to the signing of the mortgage, the Member convinced the realtors to set aside the sale agreement between them and Mr. and Mrs. S. In a September 29, 2009 letter to the realtors' legal counsel arguing for the sale agreement to be set aside, the Member states the following:

38. By way of personal background we advise that Mr. S. is in excess of 84 years of age and is in ailing health. Mrs. S. is approximately 66 years of age, however has dementia issues. It can be safely said that both vendors clearly fall within the common-law definition of "Aged and Infirm". Having lived in the subject property for over 18 years, owing to their advanced age and physical immobility, it was necessary for them to move into an assisted living environment which was to take place September 27th, which no doubt your clients were aware of.

39. Ultimately, the property sold on April 30, 2010, approximately six months after Mr. and Mrs. S signed the agreement with 599875 Saskatchewan Ltd. The sale price accepted by Mr. and Mrs. S. was \$135,000.00.

40. The net proceeds from the sale after payment of realtor commissions, disbursements and the \$115,500.00 loan (with lending fee), was \$9,909.69. That amount was paid to Mr. and Mrs. S. in May of 2009.

41. The end result of the transaction facilitated by the Member was that Mr. and Mrs. S. were placed in a better financial position having sold their property for \$135,000.00 rather than \$105,000.00. Mr. and Mrs. S. did, however, have to pay the additional \$10,500.00 fee to the Member's affiliate, 599875 Saskatchewan Ltd. When converted to an interest calculation, the

return on the investment of 599875 Saskatchewan Ltd. over the six month term of the loan was approximately 20% per annum.

42. The Member states that he provided approximately \$5,000.00 in free services to Mr. and Mrs. S that set off a portion of the \$10,500.00 lending fee that was charged. The services provided by the Member included the following: legal research in connection with the setting aside of the initial sale agreement, exploring alternative financing options and preparation and registration of security documentation. 599875 Saskatchewan Ltd. also incurred approximately \$1,600.00 in interest in relation to the loan charged by the third party lender. The net gain by the Member and or his associate was therefore approximately \$3,400.00. The Member and his family also attended to the home of Mr. and Mrs. S to assist in cleaning and painting the home prior to sale.

PRIOR HISTORY

43. The Member has no prior discipline history.