



**The Law Society of Saskatchewan**

**RODNEY CHARLES SIMALUK**

**HEARD: May 18, 2012**

**DECIDED: June 1, 2012**

*Law Society of Saskatchewan v. Simaluk, 2012 SKLSS 1*

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF RODNEY CHARLES SIMALUK,  
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 (hereinafter called the “Hearing Committee”) comprised of Thomas Campbell as Chair and Heather Laing and Della Stumborg, convened by telephone conference call on Friday May 18, 2012 with Mr. Timothy F. Huber representing the Investigations Committee of the Law Society. Rodney Charles Simaluk was also present and self-represented. All parties took part by conference call.
2. Neither Mr. Huber nor Mr. Simaluk had any objections to the formation of the Hearing Committee, the convening of the hearing by conference call or any other matter relating to the complaint or proceedings leading up to the hearing.
3. The following documents were admitted by consent:  
  
P-1 - Notice of Hearing with Proof of Service  
P-2 - Agreed Statement of Fact (sic) and Admissions.  
P-3 - Statement of Costs.
4. The amended Formal Complaint, attached to the Agreed Statement of Fact and Admissions, alleges that the member is guilty of conduct unbecoming a lawyer in that he:
  - i) did enter into or continue a debtor-creditor relationship with his client, J.L., when his interests and the interests of J.L. were in conflict, more particularly, he did:
    - a. prepare or cause to be prepared an instrument wherein his client J.L. transferred an interest in land to him, specifically a mortgage in the amount of

\$18,000.00;

b. enter into transaction with his client J.L. wherein he acquired an interest in the land without ensuring that the terms of the business transaction were fully disclosed to the client in writing in a manner that was reasonably understood by J.L.;

c. enter into a business transaction with his client J.L. wherein he acquired an interest in land without ensuring that J.L. received independent legal advice in relation to the transaction;

5. Mr. Simaluk confirmed that on the basis of the Agreed Statement of Fact and Admissions, he was entering a plea of guilty in relation to the allegations set out in the amended Formal Complaint dated February 27, 2012.

6. Mr. Huber and Mr. Simaluk requested and agreed to the Hearing Committee determining the sentence and both spoke to the sentence. The Hearing Committee then adjourned to consider its sentence. The hearing was re-convened and the decision was delivered orally with written reasons to follow. These are those written reasons.

7. Mr. Simaluk entered into a mortgage agreement with his client. The mortgage was intended to secure a series of loans from Mr. Simaluk to his client, who was unable to secure credit elsewhere. The client needed money to pay property tax arrears and an outstanding line of credit. The mortgage registered against the client's home was in the amount of \$18,000.00. The total amount advanced by Mr. Simaluk when the Law Society became aware of the situation was approximately \$14,600.00. Mr. Simaluk made no further payments after the Law Society became involved.

8. The Law Society was concerned due to the fact that the client entered into this mortgage against her primary residence without the benefit of independent legal advice. Mr. Simaluk has acknowledged accepting this mortgage from his client and that he put their interests in conflict. Due to the fact the client did not receive independent legal advice; the client was not fully informed as to the remedies that would have been available to Mr. Simaluk in the event of a default.

9. The client was contacted by the Law Society and confirmed that Mr. Simaluk had been her lawyer for over ten years; she needed to resort to non-traditional financing options as a result of her bad credit; she was not aware of any remedies that Mr. Simaluk might have as a mortgage holder; confirmed that the property referred to in the mortgage was her primary residence; she did not recall being offered independent legal advice and the money advanced represented payments made to her creditors on her behalf by Mr. Simaluk.

10. Mr. Simaluk, in his submissions, advised that the client was a long-time friend and that she approached him indicating that she was having financial difficulties. The bank was beginning foreclosure proceedings and tax enforcement proceedings had also been commenced. He further advised that the client's common-law spouse had lost his job and was unemployed

and that the client was reasonably sophisticated. He also stated that after the Law Society got involved, the client approached him and asked for further money but he advised her it was not a good idea because of the proceedings commenced by the Law Society.

11. There are several mitigating factors. Firstly, the client does not appear to have suffered any loss and in fact, was extended credit that she might not otherwise had been able to secure. Secondly, Mr. Simaluk self-reported this loan in his annual trust reporting, which put the Law Society on notice. Thirdly, Mr. Simaluk advises that he has never loaned money to a client before and in this instance, there was no intention to deceive and in fact no harm to the client.

12. Mr. Simaluk has a prior discipline record from 2007 relating to dilatory practice.

13. Mr. Huber's position on penalty was that Mr. Simaluk should receive a formal reprimand, a fine in the amount of \$500.00 and be ordered to pay the costs of the proceedings in the amount of \$1,495.00.

14. Mr. Simaluk in his submissions did not oppose Mr. Huber's request for a reprimand, stated he was "...in agreement to the fine" but asked that the costs be waived or at least reduced because of his total cooperation throughout and the mitigating reasons referred to above.

15. The Code of Conduct Chapter XVI provides as follows:

**“Conflict of Interest Between Lawyer and Client**

**RULE**

(b) The lawyer shall not act for the client where the lawyer's duty to the client and the personal interests of the lawyer or an associate are in conflict.

(d) The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:

(i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;

(ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;

(iii) the client consents in writing to the transaction; and

(iv) there is no appearance of undue influence.

**Commentary**

1. The guiding principles announced in the Rule relating to impartiality and conflict of interest between clients apply *mutatis mutandis* to this Rule.

2. A conflict of interest between lawyer and client may exist in cases where the lawyer gives property to or acquires it from the client by way of purchase, gift, testamentary disposition or otherwise.

4. The lawyer should avoid entering into a debtor-creditor relationship with the client ... It is undesirable that the lawyer lend money to the client except by way of advancing necessary expenses in a legal matter that the lawyer is handling for the client.”

16. A conflicting interest is one that would be likely to affect adversely the lawyer’s judgment or advice on behalf of, or loyalty to a client. The reason for the rule is self-evident. The client or the client’s affairs may be seriously prejudiced unless the lawyer’s judgment and freedom of action on the client’s behalf are as free as possible from compromising influences.

17. Mr. Huber has correctly pointed out that the purposes of Law Society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. The Law Society needs to maintain the public’s confidence in the integrity of the profession and the ability of the profession to govern its own members.

18. Both specific and general deterrence need to be addressed in the imposition of a penalty. In this case, Mr. Huber conceded that Mr. Simaluk will not likely make this mistake again. However, it is the potential for abuse and the perception of the public that will more often than not draw an adverse inference where a member is in a conflict position with his or her own client that requires a sentence that will act as a general deterrent to avoid damage to the reputation of the profession as a whole.

19. Mr. Huber referred to two cases to the Hearing Committee. The first was a decision in the matter of Dwayne Z. Braun (Discipline Decision #09-01), rendered March 6, 2009. In the *Braun* case, the member was also involved in a mortgage relationship with his client, although the member obtained a written waiver of independent legal advice in relation to the mortgage. However, six months later when the client was unable to address the indebtedness, the member requested the client transfer the land secured by the mortgage to him and avoid foreclosure proceedings. The client did not obtain independent legal advice and was therefore unaware of the implications of what he was doing and was not aware of various protections available to him in foreclosure proceedings. However, as in this case, the client entered into the transaction voluntarily. The Hearing Committee found that the Member’s failure to properly advise his client and to insist upon either independent legal advice or a waiver of such independent legal advice was conduct that fell short of that required by the Code.

20. The Hearing Committee assessed a fine in the amount of \$500.00 in addition to a reprimand and ordered that the member pay the costs of the hearing in the amount of \$3,940.00. The member was given 30 days to pay the monetary component of the penalty. The costs may have been higher than usual as the member was also sentenced on two charges of dilatory practice at the same time.

21. The second case referred to the Hearing Committee by Mr. Huber was *Law Society of Saskatchewan v. Johnson*, 2011 SKLSS 7, a decision having been rendered on November 22, 2011. In this case, the Member failed to advise his client that a numbered company that he had an interest in was the vendor in his client's real estate purchase. As a result, he failed to obtain his client's consent to the conflicting interest and failed to provide his client with a reasonable opportunity to seek independent legal advice in relation to the transaction.

22. The Member self-reported the conflict of interest to the Law Society, had no prior finding of conduct unbecoming a lawyer on his record, had gained no benefit from the failure to disclose his conflict of interest to his client and acknowledged that he had made a huge mistake which was highly embarrassing for him with his family and his peers.

23. In that case, the Hearing Committee adopted a joint submission on sentence and the Member was reprimanded and assessed costs in the amount of \$1,955.00. The member was given 14 days to pay the costs.

24. With respect to the issue of costs, the *Legal Profession Act* gives the Discipline Committee (which is the Hearing Committee in this case), the authority to require the Member to pay all the costs of the inquiry, including the investigation and Hearing. An award of costs must of course be reasonable.

25. In this case, Mr. Simaluk was asked if there was any issue about the quantum of costs and he advised that there was not. The costs in this case are composed of Mr. Huber's time (6.2 hours billed at \$200.00 per hour) in the amount of \$1,240.00 and the Royal Reporting fee for May 18, 2012 (minimum 3 hours) in the amount of \$255.00. Mr. Huber's time was itemized, full particulars were provided to Mr. Simaluk prior to the Hearing and as indicated above, the Statement of Costs was entered as Exhibit P-3.

26. The Hearing Committee's view is that, in the absence of very compelling circumstances, the Member should pay the costs of the proceedings as allowed by the *Act*. Very compelling circumstances may include, but would not be restricted to the members financial status, whether the costs are so large that they are punitive, whether there is full supporting material for the amount of costs claimed and whether the member has been provided with an opportunity to respond to the information and to respond to the total amount of potential costs.

27. In this case, there was no suggestion that Mr. Simaluk's financial situation was such that it would be difficult or impossible for him to pay the award of costs. The costs in this case are certainly not significantly large. Mr. Simaluk was provided with full particulars as to how the amount was calculated and he was given an opportunity to respond to the information and confirmed that he had no issue with the quantum of costs.

28. Mr. Simaluk's request that costs be waived was for the mitigating reasons referred to above. It is the Hearing Committee's respectful opinion that these mitigating circumstances, either in isolation or in total, do not constitute "very compelling circumstances" as envisioned by the Hearing Committee.

29. As a result of the above, the Hearing Committee orders that:
- i. Rodney Charles Simaluk shall receive a reprimand;
  - ii. Rodney Charles Simaluk shall, within 14 days of this Order, pay a fine to the Law Society of Saskatchewan in the amount of \$300.00; and
  - ii. Rodney Charles Simaluk shall, within 14 days of this Order, pay costs to the Law Society of Saskatchewan in the amount of \$1,495.00.

Dated in the City of Yorkton, in the Province of Saskatchewan the 1<sup>st</sup> day of June, 2012.

“Tom Campbell”  
Chair of the Hearing Committee

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

**In relation to the Amended Formal Complaint dated February 27, 2012, alleging that he:**

- 1. did enter into or continue a debtor-creditor relationship with his client, J.L., when his interests and the interests of J.L. were in conflict, more particularly, he did:**
  - a. prepare or cause to be prepared an instrument wherein his client J.L. transferred an interest in land to him, specifically a mortgage in the amount of \$18,000.00;**
  - b. enter into transaction with his client J.L. wherein he acquired an interest in land without ensuring that the terms of the business transaction were fully disclosed to the client in writing in a manner that was reasonably understood by J.L.;**
  - c. enter into a business transaction with his client J.L. wherein he acquired an interest in land without ensuring that J.L. received independent legal advice in relation to the transaction;**

### **Jurisdiction**

1. Rodney Charles Simaluk (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.

2. The Member is currently the subject of an Amended Formal Complaint dated February 27, 2012. The Amended Formal Complaint is comprised of the allegations noted above. The

Amended Formal Complaint was served upon the Member on February 27, 2012. Attached at **Tab 2** is a copy of the Amended Formal Complaint along with proof of service. The Member has agreed to plead guilty to the allegations of conduct unbecoming set out in the Amended Formal Complaint.

### **Particulars of Conduct**

#### **J.L. Matter**

3. In the context of the Member's annual trust review pertaining to the year 2008, the Law Society of Saskatchewan Auditor/Inspector, John Allen, became aware of a loan from the Member to one of his clients, J.L. The Member self-reported the existence of this loan. In a letter dated April 30, 2009, John Allen requested further detail.

4. On June 4, 2009 the Member wrote to John Allen with a response to his previous inquiry in relation to the loan. The Member stated the following:

**“we entered into an agreement with a long-time client and friend of ours, [J.L.]. [J.] approached us about assisting her with respect to some outstanding debts. We initially refused to help her, but as matters became desperate, we agreed to lend her funds, and we prepared and filed a mortgage against her residence. We enclose a copy of the mortgage for your review. We provided the following funds:**

**a) On December 3, 2008 we provided \$2,000 directly to [J.], which she applied to her outstanding mortgage arrears and to Revenue Canada, with respect to [J.'s] husband's outstanding tax arrears.**

**b) On December 3, 2008, we forwarded \$5,628.85 to the Resort Village of Glen Harbour with respect to [J.'s] outstanding taxes, arrears, interest, penalties, and costs.**

**c) On December 3, 2008, we forwarded \$5,000.00 to TD Canada Trust, to be applied to [J.'s] outstanding Line of Credit.**

**d) On March 17, 2009, we forwarded \$2,056.45 to TD Canada Trust, in satisfaction of [J.'s] outstanding Line of Credit.”**

5. Attached at **Tab 3** is a copy of the letter from the Member dated June 4, 2009. Attached at **Tab 4** is a copy of the Mortgage prepared by the Member and signed by J.L.

6. The loan was described by the Member as being “like a line of credit”. When the Law Society became involved only the four payments totaling \$14,685.30 were made to J.L. or on her behalf. The mortgage registered against J.L.'s property was for \$18,000.00. The Member made no further payments to J.L. after the Law Society became involved in this matter.

7. John Allen enquired with the Member as to whether or not she received any independent legal advice in relation to the mortgage. On July 2, 2009 the Member confirmed in a letter to Mr. Allen that J.L. had not received independent legal advice. Attached at **Tab 5** is a copy of the Member's July 2, 2009 letter to John Allen. Mr. Allen referred this matter to Complaints Counsel for the Law Society, Donna Sigmeth for further review.

8. Ms. Sigmeth completed a search of the Land Titles Registry to review the titles held by J.L. On September 2, 2009 Ms. Sigmeth located a title held by J.L. that included a mortgage in the amount of \$18,000.00 registered on December 8, 2008 in favor of the Member. Attached at **Tab 6** is a copy of the Land Titles Registry search.

9. On September 2, 2009 Ms. Sigmeth also contacted J.L. and interviewed her via phone. J.L. confirmed that:

- a. That the Member had been her lawyer for over 10 years.
- b. She needed to resort to non-traditional financing options as a result of her bad credit;
- c. J.L. was not aware of any remedies that the Member might have as mortgage holder;
- d. J.L. confirmed that the property referred to on the mortgage was her primary residence and that she did not recall being offered independent legal advice; and
- e. J.L. did not receive \$18,000.00 cash, rather, that payments were made on her behalf by the Member.

10. The Member acknowledges that when he accepted a mortgage from J.L. in exchange for the establishment of an \$18,000.00 "line of credit" he created a situation wherein his interests and the interests of J.L. would be in conflict as debtor and creditor. The Member acknowledges that the mortgage served to transfer to him an interest in J.L.'s property, and that this was done without J.L. having the benefit of independent legal advice. As a result of the Member's failure to ensure that J.L. received independent legal advice, she was not fully apprised of the remedies available to the Member pursuant to the mortgage and the law in the event of her non-payment of the loan. In that sense the Member failed to ensure that all of the terms of the mortgage were reasonably understood by J.L. The Member advises that J.L. was told that the Member had "all remedies available to a bank, credit union, or other lending institutions", although those remedies were not specifically explained to J.L. by the Member.

### **Prior Record**

11. The Member has one prior finding of conduct unbecoming on his record. This matter, decided in 2007, involved one count of dilatory practice. The Member received a reprimand and was required to pay a fine in the amount of \$500.00 and costs of \$700.00.