Law Society
of Saskatchewan

JAMES SCHARFSTEIN, Q.C
HEARING DATE: June 26, 2020
DECISION DATE: August 17, 2020
***Law Society of Saskatchewan v. Scharfstein*, 2020 S.K.L.S.S. 5**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF JAMES SCHARFSTEIN, Q.C.,
A LAWYER OF SASKATOON, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

(*Reasons for the majority, Perry D. Erhardt, Q.C., concurred in by Lynda Kushnir Pekrul*)

1. The Hearing in this matter proceeded on June 26, 2020, by conference call with Hearing Committee members Lynda Kushnir Pekrul, Murray Walter, Q.C., and Perry Erhardt, Q.C. (Chair) present on the call. At the Hearing, James Scharfstein, Q.C., the Member, was represented by Gordon J. Kuski, Q.C. and Holli Kuski Bassett; and Larry Zatlyn, Q.C. represented the Law Society of Saskatchewan (L.S.S.).

2. The Hearing was convened to consider a Formal Complaint set out by the Conduct Investigation Committee of the L.S.S. against the Member, which, by the time of the Hearing, comprised two counts - after being amended by the L.S.S. and reduced from eleven counts. The L.S.S. complaint alleged that Mr. Scharfstein, Q.C., is guilty of conduct unbecoming a lawyer in that he:

a. did, through recklessness, assist in the commission of a fraud, or frauds, by his client, R.S.; and
b. did act or continue to act in a matter when there was, or was likely to be, a conflicting interest between his client, R.S., and his client or former client, A.S. who he had represented on related matters.

3. At the outset of the Hearing, both Mr. Kuski, Q.C. and Mr. Zatlyn, Q.C. indicated that there were neither any objections to the composition of the Hearing Committee nor any preliminary motions to be presented. The Hearing proceeded and Mr. Zatlyn filed one document comprised of three parts, copies of which had been previously circulated to the Member and each Hearing Committee member. The documents were accepted by the Hearing Committee: namely, Agreed Statement of Facts and Admissions between James Scharfstein, Q.C. and the Law Society of Saskatchewan ("Agreed Statement") – Exhibit L-1 (copy attached). A copy of the amended formal complaint was included with Exhibit L-1. Additionally, within L-1 were references to

documents set out in two other Joint Document Books, which had been prepared by counsel and provided to Hearing Committee Members in advance of the Hearing.

4. Mr. Scharfstein entered a plea of guilty to the two counts set out in the Formal Complaint.

5. The Agreed Statement of Facts and Admissions is lengthy, and a very brief highlight of salient facts follows:

a) In late 1996, the Member was retained by two clients, A.S. and R.S., who brought certain attributes and assets together from their prior partnership and collectively incorporated a business (the "Corporation"). R.S. held 51% and A.S. held 49% of the voting shares in the Corporation and both were corporate directors at all relevant times.

b) Eventually, R.S. and A.S. had a falling out and, rather than stand down from acting for either client individually, the Member continued to act for both R.S. (the client who had retained significant control over the Corporation's assets), and the Corporation.

c) The Member prepared bills of sale and agreements for the Corporation on the instruction of R.S. and without approval of its board of directors. The documents assisted in conveying assets from A.S. and the Corporation to R.S. and a new shelf company incorporated by the Member for R.S. While doing this, the Member also corresponded with both the Corporation's lender and accountants on occasion.

d) In 2001, A.S. commenced legal action against R.S. and others. The extremely lengthy litigation ultimately resolved the differences when a trial judge determined, in 2013, that R.S. had committed fraud and conspiracy over the years to defeat A.S.'s interest, in part, by instructing the Member to prepare documents and agreements to move assets from the Corporation to companies owned by R.S. and others. The trial judge also found that R.S. had acted contrary to *The Business Corporations Act* in carrying out many of the offending activities.

e) On appeal, in 2015, the Court of Appeal upheld the findings of fact made by the trial judge particularly as they related to the fraudulent transactions.

f) This matter came to the L.S.S. for investigation following the Court of Appeal decision.

6. The Hearing Committee accepted the Agreed Statement of Facts and Admissions and subsequently entertained oral submissions from each of Mr. Zatlyn, Q.C. and Mr. Kuski, Q.C.

7. Mr. Zatlyn, Q.C. spoke to the condensed complicated facts and circumstances set out in the Agreed Statement, which gave rise to the two counts, and strongly urged the Hearing Committee to accept the joint submission set out at paragraph 3 of the Agreed Statement.

8. He indicated that the Member acted for three parties initially, then no longer acted for A.S. He noted that the Member's recklessness arose primarily when he acted on the instructions of and assisted R.S. when he knew there was an injunction in effect, and the Member was not always aware of what actions R.S. was carrying out directly, which might be contrary to the

injunction. Additionally, the Member was reckless in the correspondence he prepared and conveyed to both lenders and accountants in the circumstances.

9. Of particular note, Mr. Zatlyn, Q.C. indicated that the L.S.S. was unable to find cases with a similar fact scenario to the present case. Typically, similar cases provide a benchmark for appropriate sentencing to be recommended. As such, the recommended sentence was determined after lengthy and detailed discussion between legal counsel and their respective clients; namely, the Conduct Investigation Committee of the L.S.S. and Member. In advance of the Hearing, impact statements from the affected parties were provided to the Hearing Committee for its consideration of the effect of this entire scenario on the parties' lives. The impact statements were reviewed by the Hearing Committee, but not tendered as exhibits so do not form part of the record.

10. Mr. Zatlyn, Q.C. advised of the Member's good reputation and lack of any prior disciplinary record.

11. Mr. Kuski, Q.C. concurred in Mr. Zatlyn's indication that the joint submission on sentence be accepted by the Hearing Committee as it was the result of an arduous process undertaken by both sides in this matter and a lengthy hearing was avoided. He noted that the Member had not testified at the trial between R.S. and A.S., that R.S. had given evidence on the trial as he saw fit, and that the Member was a victim of R.S.'s incredulousness. He recounted that the events giving rise to the complaint against the Member arose twenty years ago.

12. Additionally, Mr. Kuski, Q.C. advised that both the Member and his firm have an excellent reputation. At the time of this Hearing, the Member is 68 years old and has practiced law for 43 years. He has been active in the community serving in different capacities with various organizations and as a director on numerous boards.

13. Following submissions, the Hearing Committee reserved its decision in this matter.

14. Where a member of the L.S.S. acts contrary to the Code of Professional Conduct or the Law Society Rules ("Rules") governing all members of the Law Society, it is left to be determined whether the conduct of the Member is conduct unbecoming. Such conduct is defined in clause 2(1)(d) of *The Legal Profession Act* as follows:

> "**conduct unbecoming**" means any act or conduct, whether or not disgraceful or dishonourable, that:
>
> (i) is inimical to the best interests of the public or the members; or
> (ii) tends to harm the standing of the legal profession generally;
>
> and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);

15. The Hearing Committee finds that the Member's breach of the Code constitutes conduct unbecoming. His conduct did not always comply with the applicable rules, which the public understands are the rules that must be followed by a lawyer, and his guilty plea is accepted.

16. 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 reasonable sentencing options or is "unfit" in the particular circumstances. The Hearing Committee notes

Law Society of Saskatchewan v. Wilson, 2011 S.K.L.S.S. 8, which cites and follows *Rault v. Law Society of Saskatchewan*, 2009 S.K.C.A. 81, in this regard.

17. With respect to the joint submission recommendation on penalty, the Hearing Committee considered the nature of the Member's offending activities and the motivations underpinning them. In this regard, the Hearing Committee recognizes it is confined to sentencing the Member on two counts, but it must have regard for the serious breach of ethical conduct that contributed to many years of unresolved, complicated relations between his former clients and, in some measure, exacerbated unnecessarily protracted and expensive litigation. He enabled and participated in a scheme of wrongly transferring assets and undermining a former client's ability to achieve an appropriate division of property after a failed business venture. Recklessness aside, in the Hearing Committee's view, the Member's actions revealed, at best, a flagrant disregard for what appears to have been an obvious conflict of interest or, at worst, something akin to retribution against a former client.

18. The Hearing Committee observes that the Member's actions giving rise to the charges took place more than a decade ago; in some instances, almost two decades ago. There have been no identified concerns with his practice since these events. The Member is 68 years old and has been a practising member of the Law Society for 43 years. He has no prior disciplinary record. These factors are very important to justifying the recommended sentence. If the Member had been facing the charges shortly following the events, the result may be different and this Hearing Committee would be compelled to a different outcome. A suspension or result tantamount to a lengthy suspension would be a likely outcome.

19. In this instance, the Hearing Committee confirms that the proposed three-part sentence set out in the joint submission of a resignation, a waiting period prior to re-applying for membership, and an order for costs does not fall outside of a range of reasonable sentencing options; in part, because there are no other similar fact scenarios against which to compare. There is nothing in either the Agreed Statement or submissions of counsel that suggest the joint recommendation on sentence is inappropriate. In fact, during oral submissions both legal counsel advised of extensive efforts undertaken to determine and arrive at an appropriate sentence fitting of the entire set of circumstances and relevant timeframes. Noting this, the Hearing Committee recognizes that it will be for the Law Society to determine any other appropriate future measures should the Member choose to re-apply for admission.

20. In view of both the plea entered by the Member and the submissions, this Hearing Committee finds the Member guilty of both counts within the Formal Complaint. It finds that his conduct was improper in the circumstances and an appropriate penalty must be assessed. In this matter, the Hearing Committee hereby orders, in accordance with the joint submission, that the following penalty be imposed:

a) The Member shall be permitted to resign as a member of the Law Society of Saskatchewan, which resignation shall be effective not later than October 22, 2020;

b) The Member shall not be eligible to apply for reinstatement as a member of the Law Society of Saskatchewan for a period three months immediately following the effective date of his resignation; and

c) The Member shall pay costs to the Law Society of Saskatchewan in the fixed amount of $3,000.00 within 60 days of this decision.

Agreed upon this _" 17th"_ day of August, 2020.

"Perry D. Erhardt, Q.C.", Chair

"Lynda Kushnir Pekrul"

Murray Walter, Q.C. (dissenting as to penalty):

21. This Hearing Committee is asked to confirm a jointly recommended sentence. With due respect to the remaining members of this panel who have confirmed the jointly recommended sentence, I am not prepared to do so.

22. *Law Society of Saskatchewan v. Buitenhuis*, 2020 S.K.L.S.S. 2 paragraph 15, sets out the principles to be followed when considering a jointly recommended sentence:

> The importance of deference to joint submissions as to penalty in disciplinary matters is now well established, although the several decisions that have considered and reinforced the principles underlying that importance have used various ways to describe them. It has been said a joint submission may be departed from if it is "unfit" or "unreasonable" or "contrary to the public interest" and should not be departed from "unless there are good or cogent reasons": *Rault v Law Society of Saskatchewan*, 2009 S.K.C.A. 72 (CanLII). It should be accepted unless it "is outside a range of penalties [that are] reasonable in the circumstances": *Law Society of Upper Canada v Paskar*, [1996] L.S.D.D. No. 189 at para. 81. A joint submission may be disregarded when it is "wholly inappropriate having regard to the nature of the conduct involved": *Law Society of Upper Canada v Orzech*, [1996] L.S.D.D. No. 56 at p. 6. It may be departed from where the "penalty is so disproportionate to the underlying misconduct and circumstances as to be contrary to the administration of justice or would be such as to bring the administration of justice into disrepute": *Re Gay*, [2005] O.C.P.S.D. No. 2 at para. 12.

23. The Member has pled guilty to conduct unbecoming a lawyer in that he:

a. did, through recklessness, assist in the commission of a fraud, or frauds, by his client, R.S.; and

b. did act or continue to act in a matter when there was, or was likely to be, a conflicting interest between his client, R.S., and his client or former client, A.S. who he had represented on related matters.

24. Is the proposed penalty "unfit", "unreasonable", "contrary to the public interest" or "would be such as to bring the administration of justice into disrepute"? The analysis required to answer this question includes but is not limited to:

a. Nature of the conduct involved,
b. Consequences of the Member's actions,
c. Remorse or lack thereof,
d. Sentencing precedents.

25. When conducting this analysis one must always be aware that the Law Society has a duty to protect the public as specifically articulated in sections 3.1 and 3.2 of *The Legal Profession Act, 1990*:

> **3.1** In the exercise of its powers and the discharge of its responsibilities, it is the duty of the society, at all times:
>
> (a) to act in the public interest;
> (b) to regulate the profession and to govern the members in accordance with this Act and the rules; and
> (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members.
> 2010, c.17, s.4.
>
> **3.2** In any exercise of the society's powers or discharge of its responsibilities or in any proceeding pursuant to this Act, the protection of the public and ethical and competent practice take priority over the interests of the Member.
> 2014, c.15, s.4.

Nature of the conduct involved:

26. The Member pled guilty to recklessly assisting his client R.S. to commit a fraud or frauds against his client, or former client, A.S. This is a serious wrongdoing. A wrongdoing that is based on the lack of integrity and/or the competence of the Member.

27. The Member prepared the incorporating documents for the Corporation in 1996. His clients R.S. and A.S. held 51% and 49% of the shares of the Corporation respectively.

28. In 2001, the Member prepared the incorporating documents for the Corporation. The shares were held by R.S., his son and his daughter.

29. On instructions from R.S., the Member prepared at least 12 sale documents dated February 8, February 16, March 1, March 8, May 1, May 4 and May 8th 2001 which effectively transferred all of the assets of the Corporation to R.S. or the Corporation to the detriment of A.S. The consideration set out in many of the sale documents was $1.00. To not recognize the fraudulent actions of R.S. at the time of preparing and witnessing the signing of the sale documents would require willful blindness or dangerous incompetence on the part of the Member.

30. Beginning in at least 2001, the Member clearly acted in conflict to the interests of his client, or former client, AS. Interestingly, this conflict continued through the representation by the Member's law firm of R.S. and the Corporation throughout both the trial and appeal.

Consequences of the Member's actions:

31. The Member's actions assisted R.S. in committing a fraud or frauds against A.S. As a result of the fraud and subsequent litigation to resolve the issues, A.S, R.S. and the family of R.S. collectively claim to have incurred hundreds of thousands of dollars of losses and suffered stress and emotional turmoil resulting in fractured personal relationships. Five impact statements were delivered to the hearing committee. Each of the people filing the statements claimed the Member was completely or partially responsible for their financial and emotional losses.

Remorse or lack thereof:

32. Neither the Member nor his counsel expressed any remorse for the Member's actions. In fact no explanation for the Member's actions was given.

Sentencing precedents:
33. Counsel for both the L.S.S. and the Member stated that they spent considerable time and effort to locate similar cases but were unable to locate any similar case. Therefore, there is no precedent to assist the Hearing Committee.

Conclusion:
34. Counsel for the L.S.S. and the Member have jointly recommended a penalty of resignation by the Member with no ability to apply for reinstatement for three months along with the payment of costs in the sum of $3000. A consideration of the proposed sentence leaves unanswered the following questions:

a. What does a resignation for 3 months mean in the circumstances? Is it anything more than a sabbatical, a winter vacation?
b. How does the proposed sentence protect the public by insuring integrity or competence of the Member?
c. How does the proposed sentence give priority to ethical and competent practice over the interests of the Member?

35. In conclusion, I am not satisfied with the sentence proposed by counsel. It does not reflect the seriousness of the Member's conduct in the circumstances, does not recognize the consequences of his actions, does not account for his lack of remorse and does not take into account the Law Society's duty to protect the public. Therefore it is unfit, unreasonable and against the public interest. The imposition of the proposed penalty would bring the administration of justice into disrepute and would raise issues related to the privilege the legal profession has to self-regulate.

36. The Supreme Court of Canada in *R. v Anthony Cooke* 2016 S.C.C. 43 at paragraphs 49-60 provides guidance for judges when they are troubled by a joint sentencing submission. At paragraph 58, the court stated:

> "The judge should notify counsel that he or she has concerns, and invite further submissions on those concerns, including the possibility of allowing the accused to withdraw his or her guilty plea, as the trial judge did in this case."

37. I would notify counsel of my concerns and invite further submissions on those concerns, including the possibility of the Member withdrawing his guilty pleas.

This "19th" day of August, 2020.

"Murray Walter, Q.C."

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated June 4, 2020 alleging that James Scharfstein, Q.C. (the "Member") of the City of Saskatoon, In the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

1. did, through recklessness, assist in the commission of a fraud, or frauds, by his client R.S.;

2. did act or continue to act in a matter when there was, or was likely to the a conflicting interest between his client, R.S. and his client or former client, A.S. who he had represented on related matters.

Jurisdiction:

38. The Member is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (the "Law Society"), and accordingly, is subject to the provisions of *The Legal Profession Act, 1990* (the "Act") as well as the Rules of the Law Society of Saskatchewan (the "Rules"). Attached as Appendix 1 is a Certificate of the Deputy Executive Director confirming the Member's status.

39. The Member is currently the subject of the Amended Amended Formal Complaint, containing the allegations noted above. An Amended Formal Complaint dated January 14, 2020 was served upon the Member on March 19, 2020. Attached as Appendix 2 are copies of the Amended Formal Complaint and the Amended Amended Formal Complaint with corresponding proof of service. The Member acknowledges the Amended Formal Complaint was revised, and that he received a copy of the Amended Amended Formal Complaint on June 5, 2020.

40. The Member and the Conduct Investigation Committee of the Law Society (the "CIC") have agreed that the Member shall resign instead of continued proceedings in accordance with Rules, and pursuant to Rule 1126 the Member will appear before the Hearing Committee to confirm that he shall: plead guilty to the charges in the Amended Amended Formal Complaint; resign no later than October 22, 2020; not apply for reinstatement for at least three months from the effective date of his resignation; and, pay costs of $3,000.00 to the Law Society.

Particulars of Conduct

41. A.S. and "R.S." were long-time friends. A.S. was a high-school friend with R.S.'s son. In 1994, A.S. and R.S. commenced a 50/50 partnership in the oilfield construction business. In 1996, A.S. and R.S. rolled assets into a new corporate entity, the Corporation.. A.S. and R.S. were the two directors of the Corporation until the Corporation was struck from the Corporate Registry in 2007. R.S. was a 51% shareholder in the Corporation, and A.S. was a 49% shareholder. R.S. was the Corporation's President and was in charge of the business and financial operations; A.S. was its Secretary-Treasurer and was the heavy equipment operator and, later, the construction site foreman: see Joint Document Book (the "Book"), Tab K: 2013 SKQB 227 at para 15 (the "Trial Decision").

42. A.S. issued a Statement of Claim against R.S., the Corporation(s), R.S.'s son, and J.I. in 2001: Trial Decision, and Tab L of the Book, 2015 SKCA 54 (the "Appeal Decision").

43. The Corporation was a party to the litigation as it "carries on the oilfield construction business formerly operated by [the Corporation]." The shareholders of the Corporation are R.S., his son, and his daughter: Appeal Decision at para 4.

44. The Court of Appeal found "[a]fter [A.S.] walked out, [R.S.] immediately incorporated [The Corporation] and then caused [The Corporation] to transfer, directly and indirectly, all of its assets to [The Corporation], which also assumed all of the contracts, business opportunities and employees of [the Corporation]": para 11.

45. The Court of Appeal found that "[i]n June of 2001, [A.S.] obtained an injunction from the Court of Queen's Bench to prevent [R.S., the Corporation(s) from selling, encumbering or

disposing of assets that were owned or had been owned by [the Corporation]. The judge at trial found [R.S.] had ignored the injunction, stripped [the Corporation] of equipment, sold and traded parts of the equipment ... and sold further assets into Alberta at an auction" under his daughter's name: para 15.

46. The Court of Appeal found in large measure the trial "judge's findings were predicated on his conclusions as to the credibility of the witnesses": para 16. It also noted: "[t]he judge then observed that [R.S.], although "most astute" about obtaining legal advice and documenting the incorporation of, and rollover of assets to, [the Corporation] ***(sic*** the Corporation), had entirely failed to adhere to the ***Business Corporations Act*** when winding-up [The Corporation]": para 20.

47. The Court of Appeal upheld the trial judge's findings of the liability of R.S., the Corporation, and the Corporation under the torts of conspiracy and fraud, and the oppressive claim under ***The Business Corporations Act*** but varied the assessment as to the quantum of damages.

48. The Court of Appeal upheld the trial judge's finding that: "it was most apparent from the evidence" that R.S.'s son and J.I. were " well aware that their participation in the scheme developed by [R.S.] for the quick and immediate transfer of assets from the Corporation" through them to the Corporation: para 59.

49. The Court of Appeal agreed that the co-appellants "had conspired to secretly transfer assets away from [the Corporation] in the face of this litigation and thereby had effectively reduced the equity available to satisfy [A.S.'s] claim" which was "a continuation and intensification of [R.S. 's] prior, fraudulently-created transactions over many years to funnel money out of [the Corporation] for his personal needs": para 67.

50. The Court of Appeal found no basis to interfere with the trial judge's findings of fact that the co-appellants had acted fraudulently: para 66.

51. The parties to the appeal all seemingly agreed on this point: "[n]evertheless, as [R.S.] and the cross-appellants properly acknowledge, the wind up of [The Corporation] did not comply with ***The Business Corporations Act.*** It occurred without [A.S.'s] knowledge or consent. In that corporate assets were transferred, some through [R.S.'s son] and John, to [the Corporation] in the face of [A.S.'s] claim against [R.S.] and [the Corporation], the windup is plainly in violation of ***The Statute of Elizabeth.*** The windup rendered [the Corporation] insolvent and some of the transactions were for nominal consideration.... Where a debtor is rendered insolvent by the conveyances, there is a presumption in law (arising from the necessary consequences of such action) that the conveyances were intended to defeat the debtor's creditors: ...": Appeal Decision at para Tl.

52. Shortly before his departure from The Corporation, R.S. approached A.S. to buy out his share of the Corporation, but they never came to an agreement. On November 30, 2000, when A.S. asked R.S. to see the Corporation financial statements, R.S. said if A.S. insisted on seeing the financial statements then R.S. would see that A.S. "would get nothing" and R.S. would "make up false invoices to take money out of the Corporation": Trial Decision at para 18. The decision of the trial judge on this point was essentially affirmed by the Court of Appeal.

53. The trial judge said this: "[A.S.] insisted. [R.S.] provided three of the five preceding years of financial statements, and [A.S.] left": Trial Decision at para19. The trial judge found: "almost immediately, [R.S.] formed a new corporation called [the Corporation] and proceeded to transfer both directly and indirectly assets of the Corporation to the Corporation which assumed all the

contracts, business opportunities, and employees of the Corporation. The only thing that changed in the day-to-day operations was the absence of [A.S.] and the change of name on the sign and invoices to the Corporation. [R.S.] continued to be general manager of [the Corporation] and operated it as his own. However, the share structure in [the Corporation] was listed as 20% - [R.S.], 40% - [R.S.'s son], and 40% - [R.S.'s daughter]": Trial Decision at para 20.

54. Documents in Tab 2 of the Book indicate that in or about 1996, the Member was retained by A.S. and R.S. to amend the articles of a shelf numbered company to [The Corporation] and to witness their Unanimous Shareholder Agreement signed Dec. 19, 1996 to be effective May 1, 1996 (the "USA"). Section 8 of the USA sets out dispute resolution mechanisms. Section 7.5 addresses non- competition for a period of three years, and subsection 3.l(c) states "[R.S.J]covenants not to directly ... participate in ... any Corporation ... which is or will be in competition with the business of the Corporation during his term as General Manager ....". Section 9.3 of the USA contemplates the principle of the "utmost good faith".

55. The Member drafted an agreement for the sale of certain assets on a rollover basis effective May 1, 1996, and witnessed A.S.'s signature, whereby A.S. agreed to transfer assets to The Corporation in consideration for The Corporation assuming specific debt and promising to pay to A.S. the balance by way of promissory note and redeemable Class C shares: Tab 3 of the Book.

56. Documents in Tabs 1 and 4 of the Book indicate that the parties met with accountants from Coopers & Lybrand on January 31, 1995, and that on September 10, 1996 there were certain updates that changed matters referred to in Coopers & Lybrand's previous letter of October 6, 1995. The "Goodwill Elected Value" was set at $25,598.00. On September 10, 1996, Coopers & Lybrand instructed the Member to draft the appropriate documents that were necessary to finalize the transfer of assets.

57. The document in Tab 5 of the Book indicates that, on November 27, 1996, the Member advised R.S. and The Corporation that he had prepared the necessary corporate documentation (as instructed by Coopers & Lybrand on September 10, 1996); he asked that R.S. advise of a date that he and A.S. were able "to attend at our office for the purpose of signing the documents".

58. A.S. left the Corporation on Nov 30, 2000; by December 4, 2000 his legal counsel wrote letters to request financial information relating to the Corporation to allow for an audit.

59. The document in Tab 8 of the Book indicates that A.S. had 44 questions for R.S., and on January 22, 2001 the Member (after meeting with R.S.) provided answers in response to A.S. 's legal counsel.

60. The lawyers for A.S. and R.S. were in communication in late January and early February of 2001 in relation to the audit as evidenced by Tabs 9 to 13 of the Book. On February 5, 2001, the Member asked A.S.'s lawyer what was to happen if A.S. "has taken out more money from the Corporation than our client [R.S.J": Tab 12 of the Book.

The series of legal documents drafted by the Member regarding the transfer of assets directly and indirectly from the Corporation to the Corporation included documents described in the following summary:

61. The Member prepared a Memorandum for the sale of land and buildings dated February 8, 2001 by The Corporation to R.S. in consideration of R.S.'s assumption of the mortgage debt and a promissory note; the Member witnessed R.S. 's signature: see Tab 15 of the Book.

62. In early February, 2001, the Member and A.S.'s lawyer communicated in relation to the delivery of financial information for the auditors: see Tabs 16 and 17 of the Book.

63. The Member prepared a Bill of Sale dated February 16, 2001 for the sale of a tractor unit from The Corporation to R.S.; the Member witnessed R.S.'s signature: see Tab 18 of the Book.

64. On February 20, 2001 the Member wrote to advise R.S. at the Corporation in relation to the demand letter delivered on behalf of J.I. see Tab 19 of the Book.

65. On February 26, 2001, A.S.'s lawyer wrote to the Member in relation to access to company books: see Tab 21 of the Book.

66. The Member prepared a Bill of Sale dated March 1, 2001 in relation to the Corporation's sale to R.S.'s son of a 1984 Komatsu Crawler and a 1993 Champion Grader: see Tabs 22 and 23 of the Book.

67. The Member prepared a Bill of Sale dated March 8, 2001 in relation to the Corporation's sale to J.I. of a 1990 Komatsu Crawler Doser and a 1976 Columbia Low Boy: see Tabs 26 and 27 of the Book.

68. The document in Tab 28 of the Book is a letter from a lawyer in the Member's firm to A.S.'s lawyer which states at paragraph 3: "Our clients, [R.S.] and [the Corporation] will deliver ...". Tab 31 contains a letter from that same lawyer, dated April 26, 2001, to the accounting firm KPMG LLP in relation to the audit which states:

> ***A shareholder's dispute has arisen among the two shareholders of The Corporation. Our firm represents [R.S.], the holder of 51 common voting shares in the Corporation.***
> .. . ***Your review is to determine whether the books, records and financial statements of the Corporation represent fairly the financial position of The Corporation. In addition, we are requesting that you determine the fair market value of the common voting shares of the Corporation as of November 1, 2000.***

69. The Member prepared two Bills of Sale dated May 1, 2001 for the sale of certain assets from the Corporation to the Corporation and two Bills of Sale for the sale of **certain assets from the Corporation to R.S. The Member witnessed R.S. 's signatures on** the two Bills of Sale from the Corporation to R.S.: see Tabs 32 -35 of the Book.

70. The Member prepared two Bills of Sale dated May 4, 2001 for the sale of the 1990 Komatsu Crawler Doser and 1976 Columbia Low Boy from J.I. to R.S., which the Corporation had sold to J.I. on March 8, 2001 as described in paragraph 30 above. The consideration paid by R.S. was $1.00 each: see Tabs 36 & 37 of the Book.

71. The Member prepared two Bills of Sale dated May 8, 2001 for the sale of the 1984 Komatsu Crawler and the 1993 Champion Grader from R.S.'s son to the Corporation, which The Corporation had sold to R.S.'s son on March 1, 2001 as described in paragraph 29 above. The consideration paid by The Corporation was $1.00 each: see Tabs 38 & 39 of the Book.

72. On May 23, 2001 the Member wrote to the Royal Bank of Canada and stated:

> ***Re: {the Corporation]***
> ***In follow-up to our telephone conversation we advise that we have now on instructions from our Client, {R.S.J, completed the necessary documentation for the acquisition by {The Corporation] of the following assets:*** [...]
> [Thereafter follows what appears to be a list of the assets formerly in the Corporation: see Tab 40 of the Book.]

73. On May 25, 2001 the Member wrote a lengthy letter to the Corporation accountants, who were also the former Corporation accountants as follows, in part:

> ***Re: [the Corporation]***
> ***Further to our meeting, we outline the transactions which we have been instructed by [R.S.] and [the Corporation] to complete:***
>
> *{.. .)*

[Thereafter follows in 9 points the list of transactions leading to the transfer of assets from the Corporation to the Corporation: see Tab 41 of the Book.]

74. On August 22, 2002 the Member wrote to A.S.'s lawyer to request that the assets sold to J.I. and to R.S.'s son be released from the Order preventing sale: see Tab 43 of the Book.

75. On March 3, 2003 the Member wrote to the accountants regarding the Corporation and its indebtedness to R.S.: see Tab 42 of the Book.

76. Tabs A-G of the Book contain the documents prepared by the Member under ***The Business Corporations Act*** for the Corporation that show:

A. at all times the Member was the "Solicitor & Agent" for The Corporation;
B. The two shareholders were R.S. and A.S. and their holdings were 51% and 49% respectively;
C. At all times there were two directors of the Corporation: R.S. and A.S.;
D. At all times the officers of the Corporation were: R.S. (President) and A.S. (Secretary/Treasurer); and
E. The Corporation remained active until it was struck from the Corporate Registry as of August 31, 2007.

77. Tabs H-J of the Book contains documents which show:

A. The Member incorporated a shelf numbered company on October 25, 2000 and was the sole shareholder until December 12, 2000 when the Member resigned, and R.S. was appointed as the sole director;

B. On February 1, 2001, the Corporation consented, under the signature of R.S., to the use of the name the Corporation; and

C. The change of name from the numbered company to the Corporation was approved on Feb. 19, 2001 by the Corporations Branch.

Prior History

78. The Member has NO prior finding of conduct unbecoming.

Documents

79. The Member and the CIC agree that the Book filed with this Agreed Statement of Facts contains documents in Tabs 1-43 and Tabs A-L that form part of the record. The documents were prepared in the manner described herein.