The Law Society of Saskatchewan

PETER A. ABRAMETZ
HEARING DATE: July 7, 2015
HEARING DECISION DATE: September 21, 2015
PENALTY HEARING DATE: February 19, 2016
PENALTY HEARING DECISION DATE: March 8, 2017

***Law Society of Saskatchewan v. Abrametz*, 2017 SKLSS 4**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF PETER A. ABRAMETZ,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Members of the Hearing Committee:	Brenda Hildebrandt, Q.C., Chair George Patterson, Q.C. Dr. Greg Stevens
Counsel:	Timothy Huber for the Conduct Investigation Committee
Member:	Peter A. Abrametz, representing himself

INTRODUCTION:

1. Peter A. Abrametz (the "Member") is the subject of an Amended Formal Complaint dated February 1, 2011. The allegations are that the Member is guilty of conduct unbecoming a lawyer in that he:

> 1. did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., enter into or continue a business transaction with his clients, Mr. and Mrs. M., when his interests or the interests of his associate and the interests of Mr. and Mrs. M. were in conflict;

2. did prefer his own interests, or the interests of his associate, 1011227770 Saskatchewan Ltd., over the interests of his clients, Mr. and Mrs. M;

3. did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., acquire from his clients, Mr. and Mrs. M., ownership of real property and failed to ensure that:

a. the transaction was a fair and reasonable one and its terms were fully disclosed to the client in writing in a manner that was reasonably understood by the clients;
b. the clients were given a reasonable opportunity to seek independent legal advice about the transaction;
c. the clients consented in writing to the transaction and the conflict of interest; and

4. did use information obtained during his representation of his clients, Mr. and Mrs. M., to obtain a benefit for himself or his associate, 1011227770 Saskatchewan Ltd.

2. Evidence regarding the allegations set out in the Amended Formal Complaint was heard on July 7, 2015, following several prior motions brought on behalf of the Member. Decisions in relation to these motions are as follows:

a. Decision of Madam Justice Rothery, dated March 16, 2011, dismissing the Member's application to quash the amended formal complaint.

b. Decision of the Hearing Committee Re: Preliminary Motion for Further and Better Particulars of the Amended Formal Complaint, dated December 6, 2011, which dismissed the Member's application for particulars; and

c. Decision of the Hearing Committee Re: Motion for Stay of Proceedings, dated May 30, 2013, which dismissed the Member's application for a stay.

3. At the outset of the hearing on July 7, 2015, both Mr. Huber and the Member indicated they had no objections to the composition of the Hearing Committee. The Hearing Committee then heard testimony from three witnesses:

i) [J.S.], a realtor, called on behalf of the Conduct Investigation Committee;
ii) Mr. John Allen, CA, Auditor/Inspector for the Law Society of Saskatchewan, called on behalf of the Member; and
iii) the Member.

4. In addition, the following exhibits were filed that day:

P-1: Proof of Service regarding the Notice of Hearing;
P-2: Agreed Statement of Facts and Admissions Between the Law Society of Saskatchewan and Peter A. Abrametz, including 11 appendices;

M-1: Letter dated February 26, 2015 to Peter Andrew Abrametz Legal Professional Corporation from Denise Smith of Just North of . . . Appraisals;
M-2: Letter dated February 23, 2010 addressed "To whom it may concern" from [W.V];
M-3: Two Waivers of Independent Legal Advice, signed by Mr. M. and Mrs. M, dated February 23, 2010 and March 26, 2010, respectively;
M-4: (For identification) Photocopy of article from www.PAHERALD.sk.ca; and
M-5: Photocopies of three photographs of Mr. J., who lived on the subject property in the Fall of 2008.

5. Written submissions were provided and oral argument proceeded by way of telephone conference call on August 25, 2015, at which time the Member was granted leave to file two further exhibits:

M-6: Property Condition Disclosure Statement dated July 2, 2008; and
M-7: Real Estate listing for Northside Acreage.

6. Thereafter the following materials were filed with the Hearing Panel, at the request of the Member:

a. A summary of the arguments prepared by one of the Member's previous counsel; and
b. Copies of the various permutations of the Formal Complaint prior to the Amended Formal Complaint dated February 1, 2011, which is the subject of these proceedings. These consisted of the original Formal Complaint dated January 4, 2010, an Amended Formal Complaint dated September 1, 2010 and an Amended Formal Complaint dated October 28, 2010.

7. The Hearing Committee acknowledges that the materials noted in Paragraph 6. b. provide some procedural history, including the deletion of some allegations as well as changes to composition of the hearing panel. However, as was noted on both July 7, 2015, when the evidence in this matter was heard, and on August 25, 2015, when oral arguments were presented, it is only those allegations outlined in the Amended Formal Complaint of February 1, 2011 which this panel is to consider and determine.

FACTUAL BACKGROUND

8. Exhibit P-2, the Agreed Statement of Facts and Admissions Between the Law Society of Saskatchewan and Peter A. Abrametz, which includes 11 appendices, details the circumstances giving rise to the Amended Formal Complaint. Some additional information was provided during the course of the hearing on July 7, 2015. A brief summary of the facts is set out in the following, as background to consideration of the allegations.

9. Mr. and Mrs. M., longtime friends and clients of the Member who were separated and not on speaking terms at the pertinent time in 2008, jointly owned an acreage in the R.M. of Paddockwood south of Christopher Lake which they wished to sell as quickly as possible. Mrs.

M., together with potential purchasers, Mr. and Mrs. H., attended the Member's office and an Offer to Purchase dated July 2, 2008 was completed, indicating a purchase price of $30,000.00 and a possession date of August 4, 2008. This Offer was open for acceptance until July 7, 2008. A deposit of $3,000.00 was contemplated in the Offer, but was not paid by Mr. and Mrs. H., who sought their own legal representation in relation to the transaction.

10. On July 2, 2008, the Member advised Mrs. M. that the purchase price was too low. The Member subsequently contacted Mr. M. and mentioned that he might be able to find a purchaser willing to pay more. Mr. M. agreed that the Member could explore this possibility.

11. On July 4, 2008, the Member contacted Mr. Y., another personal friend, advising him of the opportunity to purchase the property for $33,000.00. Mr. Y. agreed to do so, signing an Offer to Purchase that same day. Mr. and Mrs. M. signed the Acceptance on July 5, 2008.

12. To facilitate the transaction and assist both the purchaser and the vendors, all of whom are friends of the Member, the Member paid the $5,000.00 deposit on Mr. Y's behalf from the Member's professional corporation account.

13. On July 7, 2008, Mr. H. contacted Mrs. M. regarding the property and learned that it had been sold to someone else for more money. Sometime later, after discovering that the Member was a shareholder of the Purchaser, 1011227770 Saskatchewan Ltd., Mr. H. lodged a complaint with the Law Society of Saskatchewan.

14. In early August 2008, Mr. Y. determined that he did not wish to live on the property, nor did he wish to build a new home on the acreage. Mr. Y. suggested, and the Member agreed, that the two of them buy the property together.

15. As noted in paragraph 15 of Exhibit P-2, the Agreed Statement of Facts:

> "The Member acknowledges that it was at this point that his interests and the interests of Mr. and Mrs. M may have been in conflict. The Member did not ensure that his involvement was fully disclosed to both of the vendors, that they were advised of the opportunity to seek independent legal advice and that they consent in writing to the possible conflict of interest."

16. The Member and Mr. Y. incorporated 1011227770 Saskatchewan Ltd. on August 12, 2008, with each owning a 50% share in the company. The transfer authorization, previously signed in blank by the vendors on July 5, 2008, was completed by the Member indicating the company as the purchaser. At the request of Mr. and Mrs. M., the possession date was advanced from September 1, 2008 to August 14, 2008 and the purchase was finalized at that time.

17. As noted in paragraph 19 of Exhibit P-2:

> "P.M. was sent a report after the deal closed indicating that a corporation had purchased her property, but was not aware that her lawyer, the Member, had an interest in the corporation. After agreeing to join in the purchase with B.Y. and before the

> transaction closed the Member advised J.M. that the land was being purchased through a corporation formed by himself and B.Y., but acknowledges that neither J.M. nor P.M. received any independent legal advice in relation to the transaction, nor did the Member recommend to either J.M. or P.M. that independent legal advice be obtained."

18. Sometime following August 14, 2008, the Member moved another friend, Mr. J., who was in need of a place to live, into the property. Mr. J. lived there for a while rent-free, in exchange for doing some general maintenance and minor repairs. The out of pocket expenses reimbursed to Mr. J. from 1011227770 Saskatchewan Ltd. for cleaning supplies and paint were approximately $100.00.

19. In October of 2008, apparently concerned about the property being vacant over the winter, the Member suggested to Mr. Y. that they sell the property. Mr. Y. agreed and the Member contacted a realtor to list the property on October 20, 2008. The listing dated October 21, 2008 indicated an asking price of $87,500.00.

20. On November 5, 2008, the Member on behalf of 1011227770 Saskatchewan Ltd. accepted an offer of $80,000.00, with a closing date of November 21, 2008. This yielded a net gain to 1011227770 Saskatchewan Ltd. of approximately $66,000.00, even following payment of real estate fees, taxes, and other expenses. Two special resolutions of 1011227770 Saskatchewan Ltd. dated November 21, 2008 authorized payment of $17,000.00 to the Member's professional corporation and Mr. Y's corporation, respectively.

STRICT LIABILITY

21. Section 2(1)(d) of *The Legal Profession Act, 1990* defines "conduct unbecoming" as:

> "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)."

22. It is the conduct of the Member which must be examined, and not his intention, as was noted by the Saskatchewan Court of Appeal in considering this definition in *Merchant* v. *Law Society of Saskatchewan*, 2009 SKCA 33:

> "The definition in the *Act* is expansive, and conduct unbecoming may be established through intentional conduct, negligent conduct or total insensibility to the requirements of acceptable practice (as in professional incompetence). In the last two instances, where practitioners have been careless or merely incapable in some aspect, moral turpitude is not, typically speaking, a feature of the unacceptable behaviour. The section provides that the conduct in question need not be disgraceful or dishonourable to constitute conduct unbecoming. It is abundantly clear that moral turpitude is no longer an active requirement." [at para. 62]

23. This is an acceptance of the standard of strict liability, as established in the case of *R.* v. *Sault St. Marie*, [1978] 2 S.C.R. 1299. In *Sault St. Marie*, three classifications for offences were recognized. These are the full *mens rea* offences on one end of the spectrum and absolute liability offences on the other. The intermediate category of offence is that of strict liability.

24. In the 2009 *Merchant* decision, the Saskatchewan Court of Appeal commented on the nature of this third category of offence:

> "Regulatory offences that affect matters of public interest or concern fall into the intermediate category. These frequently involve controlled, restricted, or regulated spheres of activity rather than conduct prohibited on pain of criminal sanction. In strict liability offences, the onus is on the accused to establish on a balance of probabilities that he took all reasonable steps to avoid committing the offence . . . [at para. 50]

25. The Court further noted:

> "Accordingly, while lack of the requisite knowledge or intent constitutes a defence to a full *mens rea* offence, it is not a defence in law to a strict liability offence. Required instead is evidence that establishes on a balance of probabilities that all reasonable steps were taken by the defendant to prevent the commission of the prohibited act.
>
> [at para. 53]

26. Prior to the 2009 *Merchant* decision strict liability had been recognized as the appropriate default standard in the context of professional discipline in a number of provinces. See, for example: *Re Ghilzon and Royal College of Dental Surgeons of Ontario,* (1979) 94 D.L.R. (3d) 617; *Dunne* v. *Law Society of Newfoundland* [2000] N.J. No. 129; *Stuart* v. *British Columbia College of Teachers,* [2005] B.C.J. No. 989; and *Mann* v. *New Brunswick Pharmaceutical Society*, [1987] N.B.J. No. 48.

27. Since 2009, further endorsement of the standard of strict liability was noted in the decision of the Hearing Committee in *Law Society of Alberta* v. *Burgner,* [2010] L.S.D.D. No. 195 and the decision of the Alberta Court of Appeal in *Riccioni* v. *Law Society of Alberta*, 2015 ABCA 62.

28. In Saskatchewan, the Court of Appeal has on two occasions since the 2009 *Merchant* decision confirmed the use of the strict liability standard in regulating lawyers. In *Merchant* v. *Law Society of Saskatchewan,* 2014 SKCA 56 the Court stated:

> "As observed in *Merchant* (2009), conduct unbecoming can be established through negligence or total insensibility to the requirements of acceptable practice. Moral turpitude is not required. [at para. 68]

29. Subsequently, in *Hesje* v. *Law Society of Saskatchewan,* 2015 SKCA 2, the Court of Appeal noted:

> "It is clear that regardless of whether Mr. Hesje's conduct was an isolated decision made in good faith, a negligent act can meet the definition of 'conduct unbecoming' and moral

> turpitude is not a necessary element. Therefore, the standards put forth by Mr. Hesje (that an isolated decision made in good faith is not conduct unbecoming, or that a willful and reckless failure to maintain even the most minimal standards of competence and quality of service is required for conduct unbecoming) are higher than what this Court has held can constitute 'conduct unbecoming.' In that sense, the standards of 'conduct unbecoming' suggested by Mr. Hesje--with their focus on the *bona fides* of Mr. Hesje's conduct and his lack of malicious intent in failing to contact G.L.--appear to be an attempt to smuggle moral turpitude back into the definition of conduct unbecoming. Such a standard is directly contrary to this Court's holding in *Merchant* 2009. Perhaps just as importantly, no compelling argument was made to reconsider this court's decision in *Merchant* 2009." [at para. 64]

30. These comments have particular application in the case at hand. During both the course of providing evidence and in argument, the Member repeatedly emphasized his desire to help his friends, including Mr. and Mrs. M. (his clients), Mr. Y. and Mr. J., suggesting that his actions were all well-intentioned. For instance, in oral argument he stated:

> ". . . but what am I supposed to do? I'm supposed to fix everything? I'm supposed to--my folks are saying they're presenting me with a conundrum. They're presenting me with their problems. I have to do something about it. They're also--they had kids. They're grownups. I've known them for years. I went to South America with [Mr. J]. And, you know, I've been to their house. I've known them for years. I know what I'm doing. And I help people all the time. I don't hide evidence, and I don't cast stones. I help people."
>
> [Transcript, August 25, 2015, page 32]

31. Further, in his written submission, the Member noted:

> "It is now August again. I'm happy that I'm not moving into a new home or travelling to Ukraine. I'm happy I no longer have any children in diapers. But it is summer time, and I try to spend as much of August as I can with my wife and children. I had to attend provincial court yesterday because a client charged with murder had been incarcerated and charged with breaching her curfew (I think it was an innocent misunderstanding), but the point is that emergencies happen, life can move quickly, mistakes can be made, and everything that I did in relation to this transaction was loyal and honest and forthright but not perfect and my actions during the investigation were honorable."
>
> [Argument on Behalf of the Member, at para. 56]

32. Despite his emphasis on the absence of malicious intent and the presence of a strong desire to help people, the Member did not provide this Hearing Committee with any rationale for the inapplicability of the strict liability standard in this case. Accordingly, in light of the legal authorities noted above, the allegations of the Amended Formal Complaint dated February 1, 2011will be assessed using this standard.

CONFLICT OF INTEREST

33. The first three allegations outlined in the Amended Formal Complaint pertain to the issue of conflict of interest. When the events in question occurred, the *Code of Professional Conduct*

in effect was that adopted by the Law Society of Saskatchewan in Convocation on September 26, 1991, and made effective October 1, 1991 (the "1991 *Code*"). Chapters V and VI of the 1991 *Code* have particular application.

34. The Rule set out in Chapter V is that:

> "The lawyer shall not advise or represent both sides of a dispute and, save after adequate disclosure to and with the consent of the clients or prospective clients concerned, shall not act or continue to act in a matter when there is or is likely to be a conflicting interest."

35. Subparagraphs (a), (b) and (d) of the Rule set out in Chapter VI state:

> "(a) The lawyer shall not enter into or continue a business transaction with the client if:
> (i) the client expects or might reasonably be assumed to expect that the lawyer is protecting the client's interest; and
> (ii) there is a significant risk that the interests of the lawyer and the client may differ.
> "(b) The lawyer shall not act for the client where the lawyer's duty to the client and the personal interest 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."

36. For guidance on what constitutes a conflict of interest, commentary is provided to each of the above-noted Rules. In Chapter V of the 1991 *Code*, paragraphs 1 through 3 set out "Guiding Principles," which are as follows:

> "1. A conflicting interest is one that would be likely affect adversely the lawyer's judgement or advice on behalf of, or loyalty to a client or prospective client.
> "2. The reason for the Rule is self-evident. The client or the client's affairs may be seriously prejudiced unless the lawyer's judgement and freedom of action on the client's behalf are as free as possible from compromising influences.
> "3. Conflicting interests include, but are not limited to the duties and loyalties of the lawyer or a partner or a professional associate of the lawyer to any other client, whether involved in the particular transaction or not, including the obligation to communicate information."

37. The duty of loyalty referenced in Chapter V of the 1991 *Code* is one of the most significant obligations on a lawyer. In the case of *Law Society of Upper Canada* v. *Dabboll*, [2006] L.S.D.D. No. 82, the Hearing Panel emphasized its importance, referencing the Supreme Court of Canada decision in *R.* v. *Neil*, [2002] 3 S.C.R. 631:

> "The duty of loyalty is one of the highest duties a lawyer owes to his client. Quoting again from *R.* v. *Neil*, the duty of loyalty 'endures because it is essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained . . . The value of an independent bar is diminished unless the lawyer is free from conflicting interests. Loyalty, in that sense, promotes effective representation." [at para. 15]

38. Paragraph 3 of the Commentary to the Rule in Chapter VI confirms that the application of the rule extends beyond the individual lawyer to his "associates," which would include the numbered company, 1011227770 Saskatchewan Ltd., in this case:

> "This Rule applies also to situations involving associates of the lawyer. Associates of the lawyer within the meaning of the Rule may include the lawyer's spouse, children, any relative of the lawyer (or of the lawyer's spouse) living under the same roof, any partner or associate of the lawyer in the practice of law, a trust or estate in which the lawyer has a substantial beneficial interest or for which the lawyer acts as a trustee or in a similar capacity, and a corporation of which the lawyer is a director or in which the lawyer or an associate owns or controls, directly or indirectly, a significant number of shares."

39. In the circumstances which have given rise to the Amended Formal Complaint of February 1, 2011, conflicting interests are apparent. The Member was aware, and indeed advised Mrs. M., that the original asking price of $30,000.00 was too low. [See Exhibit P-2, Agreed Statement of Facts, paragraph 5]

40. With this knowledge, the Member subsequently commenced a series of misguided, although perhaps initially well-intended, decisions and actions, designed to benefit friends and ultimately himself as co-owner of 1011227770 Saskatchewan Ltd. In these circumstances, the risks outlined in the "Guiding Principles" in the Commentary to Chapter V of the 1991 *Code* became a reality. The Member's judgement became impaired, his loyalty divided, and he was no longer free from compromising influences.

41. During the course of argument, the Member submitted that there was no conflict in the circumstances. He stated:

> "There was no conflict because these folks said sell, Peter do it sell, sell. And I said how about I'll get you some more. They said yes, and this was the only way to help out [Mr. M.] as well so--the only possible conflict is between [Mr. M.] and [Mrs. M.] in terms of different possession dates and things like that. But I can--I am perfectly capable of managing that and helping--of mediating that if you will, but that was the only conflict is between--between [Mr. M.] and [Mrs. M.]."
>
> [Transcript, August 25, 2015, page 34]

42. Yet, earlier, in preparation of the Agreed Statement of Facts [Exhibit P-2], he had at least partially acknowledged the existence of a conflict of interest by the time he agreed to join Mr. Y. in purchase of the property:

> "At the beginning of August 2008, B.Y. determined that he did not wish to live in the property or build on the land. B.Y. and the Member decided to purchase the property together at B.Y.'s suggestion. The Member acknowledges that it was at this point that his interests and the interests of Mr. and Mrs. M. may have been in conflict. The Member did not ensure that his involvement was fully disclosed to both of the vendors, that they were advised of the opportunity to seek independent legal advice and that they consent in writing to the possible conflict of interest."
>
> [Exhibit P-2, Agreed Statement of Facts, paragraph 15]

43. This compromised loyalty on the part of the Member was also evidenced during both the course of the hearing and oral argument in his responses to questions from the members of the Hearing Panel on the "safe" nature of the investment at a purchase price of $33,000.00. Mr. Abrametz had testified that he "knew basically what real estate was worth" and told Mr. Y. that he "thought it was safe." [See Transcript, July 7, 2015, page 138].

44. When asked to clarify what was meant by "safe," the Member responded:

> "Well, I--I thought that regardless of whether he has to demolish or build, I thought that it was safe in terms of being a sound purchase, of--of having some value there, and--and I don't recall if I used the word safe or not, but I--I do know that I thought it was--it made sense, and he was looking for a place to build on, and I thought it was a decent location, and--and I thought it's--and I thought it was a good--I thought it was a good idea, but I'm sure I would have shared with him that it was in--according to [Mrs. M.] that it should be demolished and--according to [Mr. M.] it was fine, I'm sure, and I probably told him that it--well, I think he wanted to build, so I think he wanted to demolish and build, but perhaps, Madam Chair, if I could add, *I wouldn't advise him to do anything or a client to do anything that I wouldn't do, if I may put it that way*."
>
> [Transcript, July 7, 2015, page 142 - 143, italics added]

45. The Member in written argument further commented on the "safe" nature of the investment:

> " . . . I thought there was some risk. I thought it would be a nice place to build a home. And I thought it was safe in terms of the price. But even after cleanup and improvement, I did not expect it to sell for the sale price it did in November 2008. I suppose if we had not done such a good job, and not have been so fortunate, we would not be having this conversation."
>
> [Argument on Behalf of the Member, at para. 39]

46. His actions, in joining Mr. Y. in the purchase, through the numbered corporation, demonstrate that the Member did indeed regard the purchase as a safe investment for not only his friend, but also himself. In such circumstances, the Hearing Committee is of the view that a conflict of interest with his clients, Mr. and Mrs. M., is apparent. The allegations outlined in the Amended Formal Complaint must therefore be assessed in light of this.

ASSESSMENT OF THE ALLEGATIONS

47. The first allegation of conduct unbecoming a lawyer is found in paragraph 1 of the Amended Formal Complaint, which states that the Member:

> **"did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., enter into or continue a business transaction with his clients, Mr. and Mrs. M., when his interests or the interests of his associate and the interests of Mr. and Mrs. M. were in conflict."**

48. The evidence is uncontroverted that 101127770 Saskatchewan Ltd., of which the Member was a Director and 50% shareholder, purchased the acreage south of Christopher Lake from the Member's clients, Mr. and Mrs. M. [See paragraphs 15 through 24 of Exhibit P-2, Agreed Statement of Facts and appendices 7 through 11.]

49. Given both the solicitor-client relationship, as well as their long-standing friendship with the Member, it is reasonable to assume that both Mr. and Mrs. M. were relying on him to protect their interests. Further, the risk that the interests of the Member in gaining a profit for 101127770 Saskatchewan Ltd. would differ from best serving his clients and ensuring their own financial benefit, actually materialized. Therefore, in light of the Hearing Committee's finding that a conflict of interest existed in the circumstances, as outlined earlier, a breach of paragraphs (a) and (b) of the Rule in Chapter VI of the 1991 *Code* has been established. These, again, provide that:

> "(a) The lawyer shall not enter into or continue a business transaction with the client if:
> (i) the client expects or might reasonably be assumed to expect that the lawyer is protecting the client's interest; and
> (ii) there is a significant risk that the interests of the lawyer and the client may differ.
> "(b) The lawyer shall not act for the client where the lawyer's duty to the client and the personal interest of the lawyer or an associate are in conflict."

50. As noted earlier, the duty of loyalty to the client is vital to protecting the integrity of the administration of justice. Public confidence is undermined when that duty is breached, such as has occurred in the case at hand. This is detrimental to both the public interest and the interest of the Members of the Law Society of Saskatchewan, as it tends to harm the standing of the legal profession generally.

51. This first allegation, like the definition of "conduct unbecoming" found in section 2(1)(d) of *The Legal Profession Act, 1990* requires only conduct to be established, and contains no

element of motivation or intent. Thus, in light of the standard of strict liability applicable in the circumstances, this Hearing Committee finds that conduct unbecoming on the part of the Member has been proven in relation to paragraph 1 of the Amended Formal Complaint dated February 1, 2011.

52. The second allegation of conduct unbecoming a lawyer is that the Member:

> **"did prefer his own interests, or the interests of his associate, 1011227770 Saskatchewan Ltd., over the interests of his clients, Mr. and Mrs. M."**

53. In considering this allegation, members of the Hearing Committee had some concern with respect to the wording. Although, as previously indicated, the circumstances surrounding the transaction between the Member's clients and 1011227770 Saskatchewan Ltd., demonstrate a clear conflict of interest, there is arguably a different factual element contemplated here by use of the phrase "prefer . . . over."

54. The Hearing Committee is not of the view that this phrase was intended to add an element of subjective intent such that the standard of strict liability would not apply. In this regard, the comments of the Saskatchewan Court of Appeal in the 2009 *Merchant* decision are of assistance:

> "In this case, the Law Society did not insert any words that would indicate the conduct unbecoming charge hinged on a finding of intention. Examples of such words are 'intentionally' or 'knowingly.' The charges in this case merely say 'did' (breach) and 'did' (counsel and/or assist). 'Did' merely refers to the action of doing something and does not, in itself, impart any type of mental element. One of the definitions that the *Oxford English Dictionary* provides for the word is 'perform, effect, engage in.' The word 'did' alone does not impart any *mens rea* into the charge." [at para. 69]

55. However, the phrase "prefer . . . over" does seem to involve the requirement of an active or overt preference in the factual components in order to make out the allegation. In the case of *Smith* v. *Law Society of Manitoba*, 2011 MBCA 81, for instance, one of the charges was that the Appellant lawyer, in relation to an estate client for whom he was also the executor, had advised the deceased's sons "that the sale price should be discounted, and thus he preferred his wife's interests over the beneficiaries'." [*Smith*, at paragraph 19]

56. Like Mr. Abrametz, the Appellant in the *Smith* case failed to identify the purchaser to the clients. However, in *Smith* there was also an overt misleading:

> "As the executor of the estate, Mr. Smith owed a fiduciary duty to the beneficiaries to act in their best interests. Instead, in his capacity as legal counsel to the estate, he wrote a letter that was misleading in order to obtain a financial benefit for his family." [*Smith*, at paragraph 19]

57. This letter by Mr. Smith was also determined to have been "intentionally written in a manner to encourage acceptance of the offer to purchase" which his wife had made. [*Smith*, at paragraph 19]

58. In the case at hand, the Hearing Committee accepts that the Member, albeit in a misguided fashion which was in conflict with the interests of Mr. and Mrs. M., did not necessarily prefer the interests of 101127770 Saskatchewan Ltd. and its principals over those of his clients. Rather, it appears that he was trying to be all things to all people. He wished to facilitate a quick sale for Mr. and Mrs. M., find an acreage for his friend, Mr. Y., provide a residence for another friend, Mr. J., as well as take advantage of the real estate boom to benefit himself as a shareholder in 101127770 Saskatchewan Ltd. Which of those goals was pre-eminent is unclear.

59. Thus, while the Hearing Committee remains concerned that the Member's actions were in breach of his duty of loyalty to his clients and did indeed demonstrate a conflict of interest, in light of the wording, we find that the second allegation of the Amended Formal Complaint has not been established.

60. The third allegation of conduct unbecoming a lawyer also pertains to the conflict of interest. It is set out in paragraph 3 of the Amended Formal Complaint and alleges that the Member:

> **"did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., acquire from his clients, Mr. and Mrs. M., ownership of real property and failed to ensure that:**
>
> **a. the transaction was a fair and reasonable one and its terms were fully disclosed to the client in writing in a manner that was reasonably understood by the clients;**
>
> **b. the clients were given a reasonable opportunity to seek independent legal advice about the transaction;**
>
> **c. the clients consented in writing to the transaction and the conflict of interest.**

61. The elements of this allegation, the wording of which is derived from subparagraph (d) of the Rule in Chapter VI of the 1991 *Code*, are largely, if not completely, admitted by the Member in the Agreed Statement of Facts [Exhibit P-2]. For instance, in paragraph 15, it states:

> "The Member did not ensure that his involvement was fully disclosed to both of the vendors, that they were advised of the opportunity to seek independent legal advice and that they consent in writing to the possible conflict of interest."

62. Later, at paragraph 19 of the Agreed Statement of Facts [Exhibit P-9], the following is noted:

> "P.M. was sent a report after the deal closed indicating that a corporation had purchased her property, but was not aware that her lawyer, the Member, had an interest in the

> corporation. After agreeing to join in the purchase with B.Y. and before the transaction closed the Member advised J.M. that the land was being purchased through a corporation formed by himself and B.Y., but acknowledges that neither J.M. nor P.M. received any independent legal advice in relation to the transaction, nor did the Member recommend to either J.M. or P.M. that independent legal advice be obtained."

63. The Member's explanation for his failure to recommend that his clients obtain independent legal advice is troubling. When questioned on this point, he responded:

> "I would say, sir, that it never occurred to me. It never occurred to me. The thought never occurred to me, and I was remiss I believe. I'm not going to apologize, but I will say I was remiss. I will also say I was cognizant. I know [Mr. M.] very well. He is--and he's the only Dene medicine man that I know. He once took me to Columbia in South America. He--you saw [W.V]'s description of him. It's not too far off the mark. His wife--and they were estranged at the time. She's born in Toronto, raised in Toronto. She's a Caucasian lady. She's a schoolteacher, a retired schoolteacher.
>
> Did I think about independent legal advice? No. It never occurred to me. It didn't, and I wasn't aware. I'm not a real estate lawyer. I'm a criminal law lawyer. I love murders. I do--I've always got a number of murders on the go. I enjoy criminal law very much. I enjoy immigration law very much. That's why I was in Ukraine August of 2008. I think about immigration. I think about criminal law. I had no inkling, no concept, no idea. I didn't think about independent legal advice.
>
> As I say, I'm not apologizing, but I was remiss, and it was a CYA type of thing, and--and I think, sir, you understand the acronym, cover your butt, but there was an intervening issue, and that was--and, sir, if I may add, I think the purpose, the role, the reason we have independent legal advice is to make sure people understand, to make sure they know what they're doing, to make sure they're not getting taken advantage of. In my mind, I did what I could . . . " [Transcript, July 7, 2015, at pages 131 - 132]

64. The Member's apparent lack of insight into the role of the lawyer in safeguarding his clients' interests and ensuring their ability to make informed decisions in the face of conflicting interests is of concern to the Hearing Committee. When one considers that he did indeed practice in the area of real estate, so ought to have been aware of the risks associated with a lawyer acquiring land from his clients, the concern increases. On this point, while the Member in the quote above has suggested that he is not a real estate lawyer, the Agreed Statement of Facts (Exhibit P-2) at paragraph 1 indicates that was part of his practice. As well, his own testimony confirmed that he and his secretary were doing 80 to 90 real estate transactions annually at the time the events giving rise to the Amended Formal Complaint occurred. [See Transcript, July 7, 2015 at page 134.] This was not an insignificant number of transactions.

65. The concern is further heightened by the Member's suggestion that Mr. and Mrs. M. could in no way be considered as vulnerable. While both Mr. and Mrs. M., according to the testimony of the Member, were capable individuals, Mr. M., at least, was certainly under some financial pressures, contributing to the desire for a hasty sale of the property. As well, the couple

had been separated for a number of months, from which some emotional stress may be assumed. Given such circumstances, there was even more reason to ensure that they were fully informed of the proposed transaction with 101127770 Saskatchewan Ltd., including disclosure of the Member being one of its principals, and that their consent in writing, supported by independent legal advice, was in place. Indeed, as submitted by counsel for the Complaints Investigation Committee, at paragraph 37 of the written Argument, this "is exactly the type of scenario that requires a lawyer to act with utmost integrity."

66. Proffered in evidence as Exhibit M-3 are two Waivers of Independent Legal Advice, signed by Mr. M. and Mrs. M, dated February 23, 2010 and March 26, 2010, respectively. Signed over 18 months after the transaction in issue, and unsupported by the testimony of either Mr. or Mrs. M., these documents have little evidentiary weight and offer no assistance to the Member in countering the allegation. While it is accepted that Mr. and Mrs. M. are friends of the Member and have not filed a complaint against him [Agreed Statement of Fact, Exhibit P-2, paragraph 25], such does not negate his failure to serve them, as his clients, in a manner that adequately and appropriately safeguarded their interests.

67. In considering the elements of the third allegation, it is clear that 101127770 Saskatchewan Ltd. acquired the property from Mr. and Mrs. M. when the terms were not fully made known to them. Mrs. M. was not advised of the Member's involvement in the numbered corporation. This left her entirely unaware of the prudence of questioning the transaction terms in order to ensure her own protection. Although the Member had initially commented that the original asking price of $30,000.00 was too low, there is no suggestion in evidence that any further advice regarding the state of the real estate market, and thus the reasonableness of a $33,0000.00 purchase price, was ever provided. As noted above, it never occurred to the Member to have his clients seek independent legal advice and it was only well after the fact when the documents included as M-3 were purportedly signed. In light of this, all elements of the allegation of conduct unbecoming on the part of the Member in paragraph 3 of the Amended Formal Complaint have been proven.

68. The fourth allegation of conduct unbecoming a lawyer relates to the Member's use of information gained from his professional relationship with his clients. It is set out in paragraph 4 of the Amended Formal Complaint and alleges that the Member:

> **"did use information obtained during his representation of his clients, Mr. and Mrs. M., to obtain a benefit for himself or his associate, 1011227770 Saskatchewan Ltd."**

69. The Rule in Chapter IV of the 1991 *Code* states:

> "The lawyer has a duty to hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship, and shall not divulge such information unless disclosure is expressly or impliedly authorized by the client, required by law or otherwise permitted or required by this Code."

70. Paragraph 5 of the Commentary to this Rule is of particular assistance:

> "The fiduciary relationship between lawyer and client forbids the lawyer to use any confidential information covered by the ethical rule for the benefit of the lawyer or a third person, or to the disadvantage of the client . . ."

71. The fiduciary nature of the relationship between a lawyer and his client, and the ensuing strict standards of conduct required of the lawyer, are well-established. See, for example, *Hawrish* v. *Scott Industries Ltd. (Sask.C.A.)*, [1994] S.J. No. 362 at para. 49. In the instant case, the Member became aware of the opportunity to purchase the acreage south of Christopher Lake solely as a result of having been retained by Mrs. M. With Mrs. M.'s decision not to consult a realtor and her expressed desire to proceed with a sale price of $30,000.00, the Member knew that a quick sale at a low price was contemplated.

72. Given the Member's real estate experience and knowledge of the market at the time, he was aware that $30,000.00, or an amount even slightly higher, was a bargain. Indeed, as indicated in paragraph 5 of the Agreed Statement of Facts (Exhibit P-2), he advised Mrs. M. on July 2, 2008 that the asking price was too low.

73. Armed with the information regarding a potential bargain, the Member on July 4, 2008 contacted his friend, and ultimate co-owner of 101127770 Saskatchewan Ltd., Mr. Y., with news of the opportunity.

74. Paragraph 6 of the Agreed Statement of Facts (Exhibit P-2) indicates that in discussions with Mr. M., the Member learned that he, like Mrs. M., wanted to sell as soon as possible, but needed $5,000.00 immediately. Paragraph 10 of Exhibit P-2 confirms that this precise amount matches the "deposit payable forthwith" in the Offer to Purchase of July 4, 2008. The Hearing Committee is of the view that this is not coincidental, particularly as the previous Offer to Purchase, by Mr. and Mrs. H., had contemplated a deposit of only $3,000.00.

75. Initially information about the potential transaction, and the amounts for both a deposit and the total purchase price, was provided by the Member to and for the benefit of Mr. Y. However, several weeks later, that was changed and the information was used for the benefit of the Member, as co-owner of 101127770 Saskatchewan Ltd., the company which purchased the property from Mr. and Mrs. M. and very soon thereafter sold it at a substantial profit. In such circumstances, the Hearing Committee finds that conduct unbecoming a lawyer, as described in paragraph 4 of the Amended Formal Complaint, has been proven.

FINDINGS

76. For the reasons set out in the foregoing, the Hearing Committee finds that the complaint is well-founded and the Member, Peter A. Abrametz, is guilty of conduct unbecoming a lawyer as is alleged in paragraphs 1, 3 and 4 of the Amended Formal Complaint dated February 1, 2011.

77. With respect to the allegation contained in paragraph 2, however, the Hearing Committee finds that such has not been proven.

78. In reaching such conclusions, this Hearing Committee notes that, contrary to the repeated suggestions of the Member, it was his own conduct, and not any alleged weaknesses in the investigation processes of either Mr. John Allen, CA, Auditor/Inspector for the Law Society of Saskatchewan or the Conduct Investigation Committee, which have resulted in the findings of conduct unbecoming a lawyer. Further, while considerable latitude was afforded the Member in presenting his case, the information and exhibits provided by him did little to dissuade us from the view that he had breached his duty of loyalty to his clients.

REFERRAL FOR PENALTY HEARING

79. In light of the finding that allegations 1, 3 and 4 are well-founded, a penalty hearing will be conducted. As this matter arose prior to the 2010 amendments to *The Legal Profession Act, 1990*, a referral to the Benchers sitting as a Discipline Committee may be in order.

80. This Hearing Committee has not been called upon to assess penalty at this juncture. Counsel for the Conduct Investigation Committee did, however, cite two cases, *Smith* v. *Law Society of* Manitoba, 2011 MBCA 81 and *Law Society of Saskatchewan* v. *Anderson,* [1998] L.S.D.D. No. 69, in which findings of conduct unbecoming arising in circumstances of conflict of interest resulted in a disbarment and lengthy suspension, respectively. Pursuant to the provisions of former sections 53 and 55 of *The Legal Profession Act, 1990,* only the full body of Benchers sitting as the Discipline Committee could impose such a penalty.

81. Counsel for the Conduct Investigation Committee urged this Hearing Committee to refer the penalty phase to the Discipline Committee if we are of the view that a suspension or disbarment is within the range of possible penalties. He also, in written Argument, reserved the right to require that this matter proceed to a penalty phase before that full Discipline Committee, in the event this Hearing Committee found that conduct unbecoming on the part of the Member had been established.

82. The *Smith* and *Anderson* cases referenced demonstrate penalties on the higher end of the range on matters pertaining to breach of the duty of loyalty to the client. On the lower end, the Hearing Committee in *Law Society of Saskatchewan v. Simaluk*, 2012 SKLSS 1 imposed a reprimand, fine and order of costs in circumstances where the lawyer obtained an interest in his client's land by way of mortgage.

83. In the circumstances, the Hearing Committee, while making no determination on the matter, is of the view that the extensive range of possible penalties makes it appropriate to refer the matter to the full body of Benchers sitting as the Discipline Committee. As such, we are referring the penalty phase of this case to that body.

DATED at the City of Saskatoon in the Province of Saskatchewan this 16th day of September, 2015.

"Brenda Hildebrandt, Q.C.", Chair

DATED at the R.M. of Corman Park in the Province of Saskatchewan this 17th day of September, 2015.

"Dr. Greg Stevens"

DATED at the City of Moose Jaw in the Province of Saskatchewan this 15th day of September, 2015.

"George Patterson, Q.C."

PENALTY HEARING DECISION

Members of the Discipline Committee:

Brenda Hildebrandt, Q.C., Chair
Leslie Belloc-Pinder
David Bishop
David Chow
Perry Erhardt, Q.C.
Erin Kleisinger, Q.C.
Judy McCuskee
Scott Moffat
Ronni Nordal
Sean Sinclair
Dr. Greg Stevens
Della Stumborg
Gerald Tegart, Q.C.
Jay Watson

Counsel:

Morris Bodnar, Q.C.
on behalf of the Member, Peter A. Abrametz

Timothy Huber
on behalf of the Conduct Investigation Committee

INTRODUCTION

84. By a decision of the Hearing Committee of the Law Society of Saskatchewan (the "Hearing Committee"), released in September of 2015, following the hearing of evidence on July 7, 2015, the provision of written materials, and oral submissions on August 25, 2015, Peter A. Abrametz (the "Member") was found guilty of conduct unbecoming a lawyer in that he:

1. did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., enter into or continue a business transaction with his clients, Mr. and Mrs. M., when his interests or the interests of his associate and the interests of Mr. and Mrs. M. were in conflict;

3. did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., acquire from his clients, Mr. and Mrs. M., ownership of real property and failed to ensure that:

   a. the transaction was a fair and reasonable one and its terms were fully disclosed to the client in writing in a manner that was reasonably understood by the clients;

   b. the clients were given a reasonable opportunity to seek independent legal advice about the transaction;

   c. the clients consented in writing to the transaction and the conflict of interest; and

4. did use information obtained during his representation of his clients, Mr. and Mrs. M., to obtain a benefit for himself or his associate, 1011227770 Saskatchewan Ltd.

85. In relation to a fourth allegation, number two in the Amended Formal Complaint dated February 1, 2011, no finding of conduct unbecoming a lawyer was made by the Hearing Committee.

86. The events giving rise to these disciplinary proceedings occurred in 2008 and came to the attention of the Law Society of Saskatchewan prior to amendments to *The Legal Profession Act, 1990*, proclaimed in effect on July 1, 2010. Accordingly, pursuant to the transitional provisions concerning these amendments, the process outlined in sections 53 and 55 as they existed prior to July 1, 2010 governs. By subsection 53(3) the Hearing Committee's scope of assessment of penalty did not extend to either disbarment or the imposition of a suspension. Where, as in the present case, such a penalty was within the range of possible penalties to be considered, referral to a quorum of the Benchers sitting as the Discipline Committee was required.

87. Accordingly, a Penalty Hearing was convened by the Benchers of the Law Society of Saskatchewan sitting as the Discipline Committee (the "Discipline Committee") on February 19, 2016.

88. At the outset of the Penalty Hearing, both Mr. Bodnar, on behalf of the Member who was also present, and Mr. Huber indicated they had no objections to the composition of the Discipline Committee and acknowledged it had been properly constituted pursuant to the applicable statutory provisions. Neither made any preliminary applications to the Discipline Committee.

89. The following exhibits were then filed with the Discipline Committee:

L-1: Proof of Service regarding the Notice of Penalty Hearing;
L-2: Decision of the Hearing Committee; and
L-3: Document entitled "Timothy Huber's Time Breakdown."

90. Written submissions had previously been provided by Mr. Huber and both he and Mr. Bodnar made oral submissions and addressed questions from the Discipline Committee.

SUBMISSIONS REGARDING PENALTY

91. On behalf of the Conduct Investigation Committee, Mr. Huber requested that the following penalty be imposed on the Member:

a. a suspension of two years;

b. a fine of $17,000.00; and

c. payment of costs in the amount of $29,702.50.

92. In support of such a lengthy suspension, the cases of *Smith v Law Society of Manitoba*, 2011 MBCA 81 and *Law Society of Saskatchewan v Anderson*, [1998] LSDD No. 69 were cited.

93. In *Smith*, the Manitoba Court of Appeal upheld the penalty of disbarment imposed by the Law Society of Manitoba in circumstances where the lawyer, while acting for an estate, manipulated the sale of property at a discounted rate to a purchaser whose identity was intentionally not disclosed to the beneficiaries. The purchaser was his wife. In considering the facts of the case, the Court of Appeal, like the hearing panel for the Law Society of Manitoba, noted "a pattern of lack of integrity" and a "a taint of dishonesty."[1] They observed that:

> When the opportunity presented itself to be dishonest, [the lawyer] took it. Further, he continues to maintain that he has done nothing wrong which causes us concern that if another opportunity was to present itself he would once again favour his personal circumstances over that of the public.[2]

94. Before the Discipline Committee, Mr. Huber acknowledged that "dishonesty was not specifically established in the current case"[3] and therefore the disbarment imposed in *Smith* "is perhaps outside of the range due to the 'taint of dishonesty' that was present"[4] there. He, however, urged the Discipline Committee to apply the same length of suspension as had been imposed in the *Anderson* case. There the penalty was a two-year suspension in circumstances where Mr. Anderson had been found guilty of conduct unbecoming a lawyer in that he "did take improper advantage of a client, by entering into a land transaction using his wife as optionee in order to avoid the appearance of conflict, and in an amount significantly below its fair market value without safeguarding the best interests of his client . . . "[5]

95. With respect to the amount of the requested fine, counsel for the Conduct Investigation Committee characterized the $17,000.00 as "the ill-gotten profit realized by the Member as a result of his misconduct."[6] A further $17,000.00 profit had been gained by the other shareholder in 1011227770 Saskatchewan Ltd., the Member's friend.

96. The breakdown of costs claimed is set out in Tab 9 of the written submissions and shows disbursements of $4,702.50 as well as the sum of $25,000.00, reflecting 125 hours of work on the part of Mr. Huber in relation to this matter at a rate of $200.00 per hour. Exhibit L-3 details the work done, which spans the period November 4, 2009 through November 17, 2015.

97. On behalf of the Member, Mr. Bodnar suggested that the conduct which had been determined by the Hearing Committee to be unbecoming a lawyer was "not of a serious nature" and "the facts determine the sentence." In support of this, he relied upon the comments of Wilkinson, J.A. in *Merchant v Law Society of Saskatchewan*, 2009 SKCA 33, at para 95:

> Not unexpectedly, the reasonable range of sentences in disciplinary matters is elastic. It will be impacted by considerations of age, experience, discipline history, the unique circumstances of the Member, and the nature of the conduct complained of.

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[1] *Smith v Law Society of Manitoba*, 2011 MBCA 81 at para 44.
[2] *Smith*, *supra*, at para 46.
[3] Submissions on Penalty on Behalf of the Conduct Investigation Committee, para19.
[4] Submission, *supra* note 3, at para 39.
[5] *Law Society v Anderson*, [1998] LSDD No. 69, Charge wording quoted in para 1.
[6] Submission, *supra* note 3, at para 40.

98. In light of this, the Member's counsel indicated that the circumstances were more like those in *Law Society of Saskatchewan v Johnston*, 2011 SKLSS 7 or *Law Society of Saskatchewan v Braun*, Discipline Decision #09-01) rendered March 6, 2009, and therefore a reprimand, rather than a suspension, would be in order.

99. In favour of a reprimand rather than a suspension, it was also submitted that, although the Member has been in practice for twenty years, he had not known until the very recent tutelage provided by his third counsel, Mr. Bodnar, that his conduct surrounding the purchase of his clients' property was wrong. Mr. Bodnar stated that the Member "did not believe he did anything wrong." Indeed, "he thought that he had done everything right."

100. Later in his submissions, while still maintaining his position regarding a reprimand for the Member, Mr. Bodnar noted that if the Discipline Committee was inclined to impose a suspension, it should not be immediate. A period of time would be required for arrangements to be made for ongoing matters in the Member's practice.

101. It was acknowledged by his counsel that the Member had made some money out of the transaction. However, of the $17,000.00 noted in the materials, he submitted that the actual profit would have been closer to $14,000.00, as the Member had paid tax of approximately $3,000.00 on the gain. He also indicated the Member is willing to pay the $14,000.00 back to his clients, Mr. and Mrs. M., or to pay this amount to the Law Society and have that office remit the funds to them, rather than being assessed a fine.

102. With respect to costs, the primary objection was to the hourly rate of $200.00 indicated for Mr. Huber. Mr. Bodnar noted that the Legal Aid rate he was recently paid by the Ministry of Justice was $84.00 per hour. He further suggested that the Member ought not to have to pay the Law Society costs in relation to proceedings, such as judicial review, which he had a right to pursue. With these factors in mind, as an alternative to the amount claimed by the Law Society, Mr. Bodnar suggested a global amount of $10,000.00 in costs would be reasonable.

ANALYSIS

103. The submissions of counsel are widely divergent in this case. Thus, in assessing a penalty appropriate in the circumstances, the Discipline Committee must begin with an examination of the fundamental principles of penalty assessment in disciplinary matters.

Principles of Penalty Assessment

104. The primary consideration is public protection. The mandate of the Law Society in protecting the public is established by *The Legal Profession Act, 1990*. Sections 3.1 and 3.2 state:

> 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 the Act and the rules; and
> (c) to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of Members.
>
> 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.

105. Related to the mandate of public protection is the need to maintain the public's confidence in the integrity of the profession and the ability of the profession to govern its own Members. Gavin MacKenzie, in his book *Lawyers & Ethics: Professional Responsibility and Discipline*,[7] states that "the purposes of Law Society discipline proceedings are not to punish offenders or exact retribution but rather to protect the public, maintain high professional standards and preserve public confidence in the legal profession."

106. The Saskatchewan Court of Appeal, in considering what constitutes a principled approach to sentencing in professional discipline matters, has affirmed the required consideration of the reputation of the profession. In *Merchant v Law Society of Saskatchewan*, Madam Justice Wilkinson stated:[8]

> . . . the sentencing approach in disciplinary proceedings is different than in criminal courts. In *Law Society of Upper Canada v. Kazman*, the Law Society Appeal Panel considered the philosophy of sentencing in disciplinary matters and its unique considerations. The panel quoted extensively from *Bolton v. Law Society.* The critical distinction between sentencing in criminal matters and sentencing in disciplinary matters is highlighted in this paragraph:
>
> > A criminal court judge . . . is rarely concerned with the collective reputation of an accused's peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law society discipline panelists must always take into account the collective reputation of the accused licensee's peer group—the legal profession. According to *Bolton*, it is the most fundamental purpose of a panel's order. This is a major difference between the criminal court process and a law society's discipline process. It is largely this difference that causes many principles of criminal law, such as mitigation, to have less effect on the deliberations of law society discipline panels. It is a difference easy to lose sight of, but one that should be ever in mind.
>
> Senior counsel bear a particularly heavy burden. They have the name recognition that attracts interest, and simultaneously draws the harsh glare of publicity. As

[7] Toronto: Carswell, 1993
[8] [2009] 5 WWR 478; 324 Sask R 108 at para 98-99

> their reputations ebb or fall in the public domain, so may the profession's, and the tainted product is not subject to recall.

107. A further principle is deterrence. This involves both a specific deterrence to the Member and a general deterrence to the entire profession. As Mr. Huber noted in his written submissions on behalf of the Conduct Investigation Committee, "The penalty must serve to awaken the Member in relation to his obligations towards his clients." Further, "The membership must be reminded that in business dealings with clients, extreme caution must be exercised."

108. Other considerations in the assessment of penalty include determining whether any aggravating, mitigating, or other special factors are present. Along with providing a "Comparative Law Society Sentencing Principle Grid," which highlighted factors considered by the Law Societies of British Columbia and Alberta, Mr. Huber argued that there were numerous aggravating factors present in this case. These are summarized as follows:

> a. The Member failed to acknowledge or show any insight regarding his misconduct;
>
> b. As an experienced lawyer, he ought to have known that a transaction involving his friend and, ultimately, himself, required enhanced protection of his clients' interests;
>
> c. There are three victims in the transaction—the vendors who lost significant equity and the original intended purchaser;
>
> d. The Member gained a significant financial benefit;
>
> e. The Member was aware from the outset that he and his friend, as co-owners of the purchaser-
> corporation, were well-positioned to gain such a benefit;
>
> f. His clients were in a vulnerable situation;
>
> g. Lawyers who extract a financial benefit from their vulnerable clients in the presence of a conflict of interest diminish public confidence in the legal profession; and
>
> h. The Member has not accepted responsibility for his behavior, but throughout the disciplinary process has attempted to cast aspersions against Law Society staff and blame others for his own actions.

109. As to a mitigating factor, Mr. Huber noted that the Member has no prior discipline record. Mr. Bodnar likewise emphasized this element. He further suggested that the Member's lack of knowledge that his conduct was wrongful, and thus the absence of intentional wrong doing, also mitigated against a stringent penalty. He said:

> But the important thing is that my client didn't believe he did anything wrong because his clients were getting more money than what they would have got from the first purchaser.

> Deterrence and perception by the public of what takes place is very important. The public has to see that lawyers should not be benefiting from clients, and my client benefited and that's why he was found guilty. But the public also has to realize that when the lawyer did not intend to do anything wrong, he will be disciplined but he will not be treated at the high end of anything.

110. In examining the "Comparative Law Society Sentencing Principle Grid," the Discipline Committee notes several elements pertinent to its considerations in these proceedings. These include issues of rehabilitation of the Member, the number of incidents involved, and the presence or absence of a cooperative attitude toward the discipline proceedings. These matters will be noted below in the discussion of the various authorities.

The Range of Penalties

111. The above principles are not applied in a vacuum. Consideration is also given to the penalties imposed in other cases involving similar conduct both in Saskatchewan and other Canadian jurisdictions. The relatively low volume of disciplinary proceedings in Saskatchewan sometimes necessitates an examination of cases beyond our provincial borders. As well, with increased mobility in the legal profession, rendering decisions on penalty that are defensible on a national level, is also important.

112. The range of penalties in cases involving conflict of interest is broad, extending from reprimands to disbarment. The *Braun* and *Johnston* cases cited above are on the low end of the spectrum, both having resulted in the imposition of reprimands, fines and orders of costs against the Members.

113. In *Braun*, the Member's company financed his client's farming operation. However, unlike the present case, Mr. Braun ensured that the client had opportunity to obtain independent legal advice prior to his client executing the mortgage. Indeed, he confirmed in writing that he was "not independent" and strongly encouraged the client to seek independent advice. Later, when the client was still unable to pay his indebtedness, Mr. Braun requested a simple transfer of the land from the client rather than going through the farm foreclosure process. A new waiver of independent legal advice was not obtained. Although there was a failure to appropriately document the transaction, the Hearing Committee noted that nothing in the Agreed Statement of Facts enabled them to conclude whether the client "did or did not fully understand the significance of his options in a foreclosure proceeding." The Committee members also noted that they found no lack of integrity in the Member's dealings with his client.

114. In the present case, the findings of the Hearing Committee regarding the third count of conduct unbecoming, detailed at paragraphs 60 through 67 of the decision, demonstrate a sharp distinction from the circumstances in *Braun*. For instance, it was admitted in the Agreed Statement of Facts that, even after the deal had closed, the report to one of Mr. Abrametz's clients only indicated that a corporation had purchased her property. She was not made aware of the Member's interest in the corporation. Further, the Hearing Committee found it troubling that the Member's explanation for his failure to recommend that his clients obtain independent legal

advice was that it "never occurred" to him. His lack of insight into the role of lawyers in safeguarding clients' interests was likewise of concern.

115. In the *Johnston* case, the Member had failed to disclose to his client that he had a financial interest in the condominium development in which she purchased a unit. She had engaged him to represent her in the purchase. Subsequently, the client and other condominium owners brought action against Mr. Johnston and the other Members of the developer, 101002490 Saskatchewan Ltd. The Member self-reported the conflict of interest to the Law Society at the time the litigation was commenced.

116. Unlike the case at hand, there was no loss to the client in the *Johnston* case as she was able to sell the condominium unit as part of the settlement of the litigation. A further important distinction is that Mr. Johnston acknowledged his mistake and took responsibility early on to make amends for his error.

117. Mr. Abrametz, on the other hand, has consistently believed that he did nothing wrong. For instance, he argued before the Hearing Committee, as noted at paragraph 41 of that decision, that there was no conflict in the circumstances.

118. He has also not taken responsibility for his conduct. As Mr. Huber noted in his submissions to the Discipline Committee, the Member has cast aspersions against Law Society staff and blamed others for his actions. The Hearing Committee, at paragraph 78 of its decision, confirmed this, noting that ". . . contrary to the repeated suggestions of the Member, it was his own conduct, and not any alleged weaknesses in the investigation processes . . . which have resulted in the findings of conduct unbecoming a lawyer."

119. This pattern of blaming others continued in the submissions made on the Member's behalf at the Penalty Hearing. Mr. Bodnar noted:

> "You don't get involved with clients on real estate transactions. He didn't know this. 20 years in practice.
>
> What is our education system doing to young lawyers? And I'm saying from the day of him having a principal to the day that he is confronted with this and convicted . . .
>
> And the problem arises that after 20 years of practice he doesn't—he didn't know. When they say, oh, he still believes that he was innocent, he didn't know that you do not deal with clients like this. He didn't know. Why didn't he know? It's the system we have set up. . .
>
> My understanding is he never learned this in his articles, he never learned this after."

120. The decision in *Law Society of Saskatchewan v. Halford*, 2014 SKLSS 6, was also cited as an example where a reprimand, fine and order of costs were ordered. There the Member was

in a business relationship with his clients, focused on the joint purchase of a commercial building. The Member drafted a shareholder agreement and failed to ensure his clients had a reasonable opportunity to obtain independent legal advice. Unlike the present situation, Mr. Halford felt deep remorse for his conduct and there did not appear to be any commercial advantage gained by him.

121. The final example of imposition of a fine and reprimand rather than a suspension is *Law Society of Saskatchewan v. Simaluk,* 2012 SKLSS 1. There the Member accepted a mortgage from his client to secure loans provided to pay property tax arrears and an outstanding line of credit. The client had been unable to secure credit elsewhere. The client had not had the benefit of independent legal advice.

122. The mitigating factors present in *Simaluk* are not present in the instant case. There the client suffered no loss and, indeed, was extended credit that she might not otherwise have been able to secure. As well, Mr. Simaluk self-reported this loan on his annual trust report, putting the Law Society on notice. He was also cooperative throughout the investigation and disciplinary process.

123. As the current case is distinguished from those decisions supporting penalties on the low end of the spectrum, the Discipline Committee is of the view that a more significant penalty, including a suspension, is in order. This is particularly due to our obligation to maintain the public's confidence in the integrity of the profession. As well, the conduct exhibited by the Member must be addressed in a way that deters both him and the entire Membership from engaging in similar behavior in future.

124. The submission on behalf of the Conduct Investigation Committee was for the imposition of a two-year suspension. The *Smith* and *Anderson* cases, both at the high end of the penalty spectrum, were cited in support of this.

125. In the *Smith* case, the Manitoba Court of Appeal upheld the decisions and penalty imposed by the Law Society of Manitoba, which included disbarment and an order to pay $24,500.00 in costs. The lawyer, who had no prior findings of conduct unbecoming in his 37 years of practice, encouraged beneficiaries of an estate for which he was the executor, to sell a home to an undisclosed investor at a purchase price which was $40,000.00 less than the appraised value. An audit by the Law Society of Manitoba revealed that the investor was the lawyer's wife.

126. Mr. Smith did recommend to the beneficiaries that they obtain independent legal advice. However, both the hearing panel and the Court of Appeal noted the letter he wrote to the beneficiaries advising that the sale price should be discounted was intentionally misleading. It was noted that the entire transaction carried "a taint of dishonesty" and exhibited "a pattern of dishonest actions."

127. While, as Mr. Huber acknowledged on behalf of the Conduct Investigation Committee, this "taint of dishonesty" was not specifically established in the current case, there are similarities with *Smith*. Such similarities justify a significant penalty, albeit not a disbarment as

was imposed in *Smith.* In both cases the lawyer owed a fiduciary duty, was dealing with parties in vulnerable circumstances, purchased the property at less than fair market value, did not fully disclose the identity of the purchaser, benefited financially, and maintained the misguided view that he had done nothing wrong.

128. In *Anderson,* a Saskatchewan case, the lawyer was retained by a young farmer who had been negotiating a purchase of farm land from an elderly neighbor for a price below market value. Before the deal was finalized, the elderly gentleman died. The lawyer was retained by the widow to administer the estate. He advised her to sell the land to the young farmer at a higher price. Concerned with the apparent conflict, the young farmer retained new counsel and completed the purchase at the price originally negotiated with the deceased.

129. Shortly thereafter, the lawyer negotiated an option to purchase an additional quarter from the widow on the same favourable terms, yielding a purchase price nearly $30,000.00 below market value. The optionee was the lawyer's wife. When the widow became ill, the lawyer determined it was time for his wife to exercise the option. Due to the widow's lack of capacity and ultimate death, the transfer was delayed, but ultimately completed, albeit with reluctance, by her executor.

130. In the interim, the young farmer had again consulted Mr. Anderson regarding the draft lease in relation to the same quarter of land. The lawyer did not advise him of the option he had secured for his wife. When the transfer to his wife was completed, the lawyer told the young farmer that he was not at liberty to disclose who had purchased the property. Ultimately, the lawyer's conduct was discovered and the land transferred back to the estate. It was sold by tender for a price nearly $45,000.00 above what Mr. Anderson's wife had paid.

131. In these circumstances, the charge against Mr. Anderson was in relation to the option to purchase that had been drafted in favour of his wife and without his client obtaining independent legal advice. The hearing Committee found him guilty of conduct unbecoming a lawyer and the Discipline Committee imposed a two-year suspension and an order to pay costs.

132. While there are striking similarities to the present case, one significant difference relates to the timing of the lawyer's personal involvement. In *Anderson,* the lawyer clearly intended to personally benefit from securing the parcel of land at a reduced price from the outset. This was his sole focus. In the current matter, the Member started out by seeking to obtain a benefit for his friend, although he later became personally involved in the transaction. Indeed, as the Hearing Committee noted at paragraph 58 of its decision, "it appears that he was trying to be all things to all people. He wished to facilitate a quick sale for Mr. and Mrs. M., find an acreage for his friend, Mr. Y., provide a residence for another friend, Mr. J., as well as take advantage of the real estate boom to benefit himself as a shareholder in 101127770 Saskatchewan Ltd."

133. The Member's conduct was misguided and in clear conflict with the interests of his clients, but it appears that his initial motivation may not have been personal gain. As such, a suspension of two years, as imposed in the *Anderson* case, is not warranted here.

134. The Discipline Committee was also informed by the Order issued February 18, 2011 in the case of *Law Society of Saskatchewan v. Goby*. The circumstances in *Goby* were different from the case at hand. The charges there arose from the submission of multiple false Affidavits of Value to Information Services Corporation ("ISC"), thereby depriving ISC of fees and providing Mr. Goby with an unfair competitive advantage in the marketplace. Following acceptance of a plea of guilty to all counts of the charges, the matter was referred to the Discipline Committee for a penalty hearing. That Committee ordered a twelve-month suspension, payment of restitution in the amount of $18,000.00 to ISC, rectification of titles at the cost of the Member, and payment of the Law Society costs.

135. In the *Goby* case, there were at least 47 transactions involving false Affidavits of Value identified in the course of the investigation. As well, Mr. Goby had withdrawn funds from his trust account prior to those funds becoming properly payable to him. Such a pattern of dishonest conduct over a two-year period can be distinguished from the single transaction in the case at hand. Thus, a lesser period of suspension is in order. However, the aspect of restitution is also compelling.

136. Given the elements noted above distinguishing the current case from each of the *Smith*, *Anderson*, and *Goby* decisions, the Discipline Committee is of the view that a suspension of two months is in order. This, coupled with the other aspects of the Discipline Committee order discussed below, addresses the principles of both specific and general deterrence.

137. On behalf of the Member, Mr. Bodnar requested that if a suspension is imposed that it be delayed for a month or two from the date of the decision to enable the Member to make arrangements for any necessary transition of files, particularly as he is a sole practitioner. Mr. Huber noted that this was in the interests of clients and thus had no objection to the request. The Discipline Committee likewise concurs with this approach.

Restitution

138. On behalf of the Conduct Investigation Committee, Mr. Huber requested that, whatever the length of suspension imposed, the Member also be required to pay a fine in the amount of $17,000.00, representing the profit he realized in the transaction which gave rise to the findings of conduct unbecoming.

139. On behalf of the Member, Mr. Bodnar argued against the imposition of any penalty, but did note that the Member was willing to pay $14,000.00 to his clients, "if they want." The $3,000.00 reduction in the amount was explained as the amount of tax the Member paid on his gain of $17,000.00. It was further offered, on behalf of the Member, that the money could be paid to the Law Society and that office then forward it to the clients.

140. In response, Mr. Huber noted that the Discipline Committee, pursuant to section 55(2)(c) of *The Legal Profession Act, 1990*, as it was worded prior to the 2010 amendments, has authority to make "any other order that the committee considers appropriate." Restitution, which he regarded as an attractive option, would be included within this scope of authority.

141. To be confident that the funds are received by the vendors, it is the direction of the Discipline Committee that the Member pay $14,000.00, by way of restitution, to the Law Society for remittance to them.

Remedial Measures

142. To restore public confidence, the unique circumstances presented by this case must be reflected in the penalty imposed. On behalf of the Member, his lack of knowledge concerning ethical conduct was emphasized. Indeed, it was asserted that he has only begun to understand principles relating to loyalty and conflict of interest since retaining his third counsel, Mr. Bodnar. While this may be viewed with some skepticism, given the Member has been in practice for over twenty years, and the events in question occurred when he had been practicing for thirteen years, these deficiencies must be addressed.

143. As previously noted, section 55(2)(c) of the Act enables the Discipline Committee to make "any other order that the committee considers appropriate." In this case, a concerted focus on education regarding legal ethics and professional responsibility is required.

144. Thus, the Discipline Committee requires the Member to review the mandatory training program on the Saskatchewan *Code of Professional Conduct* entitled "Legal Ethics for Saskatchewan Lawyers," developed in 2012.

145. In addition, the Member is required, at his own cost, to view or attend training sessions on ethical issues, for which a total of at least ten Ethics Units credits have been assigned by the Law Society for Continuing Professional Development. These may be drawn from the list attached as Appendix "A" to this Decision. Alternatively, the Member may apply to the Chair of the Discipline Executive Committee for approval to view or attend other courses focused on professional ethics in satisfaction of this requirement.

146. The training referenced in paragraphs 61 and 62 is in addition to the mandatory Continuing Professional Development hours the Member is required to complete for the current practice year. Verification of satisfactory completion of this additional training must be provided to the Chair of the Discipline Executive Committee of the Law Society of Saskatchewan prior to the Member's resumption of practice following the suspension.

Costs

147. Section 55(2)(a)(v) of the Act permits the Discipline Committee to make an order:

> (v) requiring the Member to pay:
>
> (A) the costs of the inquiry, including the costs of the investigation committee, hearing committee and discipline committee;
> (B) the costs of the society for counsel during the inquiry; and
> (C) all other costs related to the inquiry.

148. The costs claimed in this case total $29,702.50. $25,000.00 of this amount reflects Mr. Huber's time on the file, which involved 125 hours from November 4, 2009 on. The balance of

$4,702.50 related to the costs of court reporters and transcripts for the various motions and hearing as well as the honorarium for the three-member Hearing Committee.

149. Filed as Exhibit L-3 was a document entitled "Timothy Huber's Time Breakdown," consisting of five pages of detailed entries.

150. As previously noted, Mr. Bodnar's primary objection to the amount of costs was the hourly rate of $200.00. This hourly rate has, however, been recognized in previous decisions of Law Society of Saskatchewan Hearing Committees. For example, in the 2012 decision of *Simaluk*, *supra*, at para 25, the $200.00 rate was noted. As here, Mr. Huber's time was itemized and full particulars provided. In such circumstances, the full costs requested on behalf of the Conduct Investigation Committee were ordered to be paid by Mr. Simaluk. There is no reason to deviate from the practice in this case.

151. Mr. Bodnar also suggested that, as the Member had a right to pursue preliminary applications, including judicial review, he ought not to have to pay the Law Society costs in relation to those proceedings. This objection is also without merit. Section 55(2)(a)(v)(C) of the Act authorizes the Discipline Committee to require the Member to pay "all other costs related to the inquiry." The costs pertaining to the preliminary motions and judicial review are encompassed in this.

152. Mr. Huber noted that the costs in this case are "unusually high" but explained that this:

> "…was closely tied to the Member's response to these proceedings and the five-year stretch of litigation that resulted from the decisions that he made to take this matter to the Court of Queen's Bench, again an abandoned trip to the Court of Appeal, and many preliminary motions, not to mention three changes in legal counsel. That's really the reason for why the costs are as high as they are."

153. Mr. Huber further noted that the case management phase was extended in this matter, and required numerous sessions with a previous Chair of the Hearing Committee. Delays were also encountered in attempting to complete an Agreed Statement of Facts and Admissions.

154. While the majority of this Discipline Committee was not part of the Hearing Committee, two Members were. They, too, had opportunity to observe the Member's conduct in extending matters, both when the evidence was presented and later when Oral Submissions were scheduled.

155. How the Member responded to the charges was entirely his choice. Nonetheless, the consequences are a higher order of costs, given the increased time required of Law Society counsel, and the additional disbursements associated with preliminary motions. The order of costs in the full amount requested on behalf of the Conduct Investigation Committee is not punitive in nature. It merely reflects the costs authorized to be collected from the Member by the legislation.

ORDER

156. Having considered the range of penalties articulated in the cases, the principles of both specific and general deterrence, the particular circumstances of this case—including both aggravating and mitigating factors, and the overriding concern to act in the public interest and maintain the public's confidence in the integrity of the profession, the Discipline Committee orders that:

a. the Member be suspended for a period of two months commencing May 1, 2017;

b. the Member, by no later than June 30, 2017, pay to the Law Society of Saskatchewan the sum of $14,000.00, which funds will be forwarded by that office to the vendors, with $7,000.00 payable to each of Mr. M. and Mrs. M. by way of restitution;

c. the Member, in addition to the mandatory Continuing Professional Development hours he is required to complete for the current practice year, at his own cost:

i. review the mandatory training program on the Saskatchewan *Code of Professional Conduct* entitled "Legal Ethics for Saskatchewan Lawyers," developed in 2012;

ii. view or attend training sessions on ethical issues, for which a total of at least ten Ethics Units credits have been assigned by the Law Society for Continuing Professional Development selected from the list attached as Appendix "A" to this Decision, or as otherwise approved by the Chair of the Discipline Executive Committee; and

iii. provide verification of satisfactory completion of this additional training to the Chair of the Discipline Executive Committee of the Law Society of Saskatchewan prior to the Member's resumption of practice following the suspension.

d. failure to complete the requirements ordered in subparagraphs b. and c. will result in an extension of the suspension beyond June 30, 2017 until such time as they are completed;

e. the Member pay costs in the amount of $29,702.50 to the Law Society of Saskatchewan on or before September 15, 2017, failing which an additional suspension from practice will be imposed until full payment has been made.

"Brenda Hildebrandt, Q.C.", Chair	March 2, 2017
"Leslie Belloc-Pinder"	March 2, 2017
"David Bishop"	March 6, 2017
"David Chow"	March 4, 2017

"Perry Erhardt, Q.C."	March 2, 2017
"Erin Kleisinger, Q.C."	March 7, 2017
"Judy McCuskee"	March 6, 2017
"Scott Moffat"	March 8, 2017
"Ronni Nordal"	March 3, 2017
"Sean Sinclair"	March 6, 2017
"Dr. Greg Stevens"	March 2, 2017
"Della Stumborg"	March 3, 2017
"Gerald Tegart", Q.C.	March 7, 2017
"Jay Watson"	March 7, 2017

Appendix "A"

Law Society of Saskatchewan Ethics Presentations (Recorded Version) (in addition to *Legal Ethics for Saskatchewan Lawyers*—Mandatory Code of Professional Conduct Training):

Managing Client Expectations	1 Ethics Hour/Unit
Ethics and Civility in Practice and Beyond	1 Ethics Hour/Unit
Advising the Insolvent Debtor	1 Ethics Hour/Unit
Staying Out of Hot Water—How to Avoid and Address Law Society Complaints	1Ethics Hour/Unit
Lunch & Learn with Brent Cotter—Recent Developments in Legal Ethics	2 Ethics Hours/Units

Canadian Bar Association Offerings Related to Ethics/Conflicts

Working with Vulnerable Clients in a Financial Setting (Webinar)	1.5 Ethics Hours/Units
Evaluating Your Ethical Practices: Get it Right Before It Goes Left (Recorded Version)	1.5 Ethics Hours/Units
CBA Skilled Lawyer Series: *Practice Management* (8 sessions of 1.5 hours each—online course)	12 Ethics Hours/Units

Saskatchewan Trial Lawyers' Association Offerings Related to Ethics

Making the Right turns on the Path to Justice: An Ethical Workshop (Recorded course)	4 Ethics Hours/Units

Ethical Issues in Saskatchewan Law	(Webinar)	6 Ethics Hours/Units
Ethics—Emerging Issues (Recorded Version)		1.5 Ethics Hours/Units

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated February 1, 2011, set out by the Investigation Committee consisting of Evert van Olst, alleging the following:

THAT PETER A. ABRAMETZ, of the City of Prince Albert, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

1. **did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., enter into or continue a business transaction with his clients, Mr. and Mrs. M., when his interests or the interests of his associate and the interests of Mr. and Mrs. M. were in conflict.**

   Reference Chapter VI of the Code of Conduct

2. **did prefer his own interests, or the interests of his associate, 1011227770 Saskatchewan Ltd., over the interests of his clients, Mr. and Mrs. M.;**

   Reference Chapter VI of the Code of Conduct

3. **did personally, or on behalf of his associate, 1011227770 Saskatchewan Ltd., acquire from his clients, Mr. and Mrs. M., ownership of real property and failed to ensure that:**
   a. **the transaction was a fair and reasonable one and its terms were fully disclosed to the client in writing in a manner that was reasonably understood by the clients;**

   b. **the clients were given a reasonable opportunity to seek independent legal advice about the transaction;**

   c. **the clients consented in writing to the transaction and the conflict of interest; and**

   Reference Chapter VI of the Code of Conduct

4. **did use information obtained during his representation of his clients, Mr. and Mrs. M., to obtain a benefit for himself or his associate, 1011227770 Saskatchewan Ltd.**

   Reference Chapters IV and VA of the Code of Conduct

JURISDICTION

157. Peter A. Abrametz (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"). The Member was called to the Bar in 1996. Since being called to the bar, he has practiced law exclusively in Prince Albert and in the areas of immigration law, criminal law, insurance law, personal injury law and real estate law.

158. The Member is currently the subject of an Amended Formal Complaint initiated by the Law Society dated February 1, 2011. The Amended Formal Complaint is attached at Tab 1 along with proof of service.

PARTICULARS OF CONDUCT

159. On July 2, 2008, the Member was contacted by P.M. She attended at the Member's office with Mr. and Mrs. H. P.M. indicated that she wished to sell her home to Mr. and Mrs. H for $30,000.00. The home was owned jointly with her husband, J.M. P.M. and J.M. were separated at the time. The property was a 13.99-acre lot located in the R.M. of Paddockwood just south of Christopher Lake. The Member was familiar with the region and had been to the specific property previously, but not for several years. In July of 2008, P.M. said that the home needed to be demolished. J.M. told the Member that it was "fine".

160. The Member prepared an Offer to Purchase [Tab 2] for the property which if made by Mr. and Mrs. H. and accepted by P.M. and J.M. would have seen the property sold for $30,000.00. The offer provided for a deposit of $3,000.00. The offer was to be open for acceptance by P.M. and J.M. up to July 7, 2008. Mr. and Mrs. H. also had P.M. prepare and sign a Property Disclosure Statement. The offer was provided to Mr. and Mrs. H. who sought their own legal representation on the transaction.

161. On July 2, 2008, the Member advised P.M. that they were asking too little for the property and discouraged them from selling and advised them to consult a realtor. P.M. declined, as she wanted to sell as soon as possible. property and discouraged them from selling and advised them to consult a realtor.

162. The Member consulted J.M., who was residing at the property, who agreed to sell for $30,000.00. He also wanted to sell as soon as possible, but needed $5,000.00 immediately.

163. P.M. and J.M. were not on speaking terms.

164. On July 4, 2008, the Member contacted his personal friend B.Y. and advised him that there was an opportunity to purchase the property being sold by P.M. and J.M. for $33,000.00, $3,000.00 more than the price discussed in the deal with Mr. and Mrs. H.

165. The Member knew B.Y. was looking for land to purchase and upon which to build a home. The Member contacted B.Y. and described the property. B.Y. had not had an opportunity to see the property. Nevertheless, he agreed to purchase the property for $33,000.00.

166. The Member referred B.Y. to another lawyer, Mr. Bernie Kopera. Mr. Kopera drafted an Offer to Purchase providing for the purchase price of $33,000.00 with a $5,000.00 deposit payable forthwith. B.Y. signed the Offer to Purchase on July 4, 2008. The P.M. and J.M. signed the Acceptance the following day [Tab 3].

167. Transfer authorizations were signed by P.M. and J.M on July 5, 2008. The name of the transferee was initially left blank which is not unusual at this point in time in these transactions. [Tab 4].

168. P.M. and J.M. were also longtime friends and clients of the Member. Mr. M attended the Member's bar induction ceremony in 1996. Together they attended the Conference of Indigenous Elders and Priest of America in Columbia in 1999. The Member and his spouse had social visits with P.M. and J.M. including visits to the subject property for meals and a sweat lodge. The Member has done pro bono work for all three of P.M. and J.M.'s children. The Member was aware that J.M. was in need of funds immediately.

169. To facilitate the needs of his friends now involved in the transaction, the Member paid the deposit on B.Y.'s behalf directly to J.M. by paying $4,000.00 to CitiFinancial on J.M.'s behalf and $1,000.00 directly to J.M. so that he could travel to his work in Alberta. Copies of these cheques are attached at Tab 5. At J.M.'s request the Member made additional payments to, and on behalf of J.M. to others, between July 7, 2008 and August 7, 2008. One of the payments was for a deposit for the purchase of a home by Mr. M. Copies of these cheques are attached at Tab 6. All of the payments, totaling $11,600.00, were made from the Member's professional corporation account as the transaction had not yet closed and B.Y's money could not yet be released to the vendors. But, the Member was aware that on closing he would be in possession of funds to be disbursed to J.M. and could recover the advances made on his behalf at that point. Because of his relationship with Mr. Y the Member was also comfortable in advancing funds on his behalf.

170. On July 7, 2008 Mr. H. contacted P.M. to further discuss the property and was advised that the property had been sold to someone else for more money.

171. At the beginning of August 2008, B.Y. determined that he did not wish to live in the property or build on the land. B.Y. and the Member decided to purchase the property together at B.Y's suggestion. The Member acknowledges that it was at this point that his interests and the interests of Mr. and Mrs. M may have been in conflict. The Member did not ensure that his involvement was fully disclosed to both of the vendors, that they were advised of the opportunity to seek independent legal advice and that they consent in writing to the possible conflict of interest.

172. In order to accomplish the purchase, the Member incorporated 1011227770 Saskatchewan Ltd. on August 12, 2008. The incorporation documents are included at Tab 7. B.Y. and the Member each owned a 50% share in the corporation.

173. The blank transfer authorization signed by the vendors on July 5, 2008 was completed by the Member using 1011227770 Saskatchewan Ltd. as the purchaser.

174. P.M and J.M. requested that the possession date on the transaction be moved up from September 1, 2008 to August 14, 2008. The transaction was finalized on or about that date.

175. P.M. was sent a report after the deal closed indicating that a corporation had purchased her property, but was not aware that her lawyer, the Member, had an interest in the corporation. After agreeing to join in the purchase with B.Y. and before the transaction closed the Member advised J.M. that the land was being purchased through a corporation formed by himself and B.Y., but acknowledges that neither J.M. nor P.M. received any independent legal advice in relation to the transaction, nor did the Member recommend to either J.M. or P.M. that independent legal advice be obtained.

176. After the transaction, the Member moved a friend from the United States who was at the time in Regina and in need of a place to reside, Mr. J., into the property. Mr. J. lived in the property rent free in exchange for doing improvements to the property such as general maintenance, painting, electrical repairs and repairing leaks in the roof. Over and above the free rent provided to Mr. J. the out of pocket expenses for 1011227770 Saskatchewan Ltd. and the Member pertaining to the improvements to the property was approximately $100.00 for cleaning supplies and paint.

177. On October 1, 2008, B.Y. purchased a new home under construction, and he still resides in this home.

178. In October, 2008, knowing that B.Y. would not be building on the property, and concerned about vandalism and it being vacant over the winter, a vacant house across the road being lost to vandalism in July, the Member suggested to B.Y. that the property should be sold. B.Y. agreed. The Member contacted a local realtor and asked her to list the property on October 20, 2008. The realtor determined the appropriate list price on the property should be $87,500.00 based on another property that had recently sold. It was listed accordingly on October 21, 2008. The Listing Agreement is attached at Tab 8.

179. On November 5, 2008, an Offer to Purchase by way of a Residential Contract of Purchase and Sale [Tab 9] was accepted by the Member on behalf of 1011227770 Saskatchewan Ltd. in the amount of $80,000.00. The Realtor, informed the Law Society investigator in 2009 that she was surprised the property sold for that price so quickly but advised that at that time prices were sky rocketing with many purchases being made sight unseen especially in the areas close to the Lakeland District (resort areas). The transaction closed on November 21, 2008.

180. After payment of realtor fees, taxes, and other expenses, the corporation owned by B.Y. and the Member netted approximately $66,000.00 on the sale. Attached at Tab 10 is a copy of the Statement of Adjustments relating to the sale of the property by 1011227770 Saskatchewan Ltd. Attached at Tab 11 is a copy of two resolutions of 1011227770 Saskatchewan Ltd. authorizing the payment of $17,000.00 each to the Member and B.Y.

181. P.M. and J.M. and the Member have been friends for many years. The Member has also been their lawyer for many years. J.M. and P.M. are now aware of all of the circumstances surrounding the sale. They have not filed a complaint against the Member and none is anticipated.

182. The complaint was initiated by Mr. H. He discovered that the property had been sold and determined, through his own investigation, that it had been purchased in July by a corporation owned by the Member (and B.Y.).

PRIOR HISTORY

183. The Member has no other discipline history.

184. The Member and the Law Society agree that entering into this agreed statement of facts shall be without prejudice to either party entering additional evidence.