



Law Society
of Saskatchewan

Law Society of Saskatchewan v. Howe, 2022 SKLSS 4

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND A REQUEST FOR MEMBER'S APPLICATION
TO RESIGN INSTEAD OF CONTINUED PROCEEDINGS BY WILLIAM HOWE
REASONS FOR THE DECISION OF THE CONDUCT INVESTIGATION COMMITTEE
FOR THE LAW SOCIETY OF SASKATCHEWAN**

1. On November 15, 2022, William Howe applied to the Law Society of Saskatchewan Conduct Investigation Committee (the Committee) to resign instead of continued proceedings, effective January 1, 2023, pursuant to Rule 1112 of the Rules of the Law Society of Saskatchewan.

2. Rules 1112 provides as follows:

Resignation Instead of Continued Proceedings

1112 1. A member may make an application to resign instead of continued proceedings to:
a. a Conduct Investigation Committee in the early stage of an investigation or after a Formal Complaint has been served on the member but before commencement of a hearing; or
b. the Chairperson of the Competency Committee at any time during a review pursuant to Rule 1108.

2. The Conduct Investigation Committee or Chairperson of the Competency Committee may hear the application to resign instead of continued proceedings, as follows:

a. by consent of Counsel for Conduct Investigation Committee or Counsel for the Society; and

b. if the member makes admissions and enters into an Agreed Statement of Facts.

3. The Conduct Investigation Committee or the Chairperson of the Competency Committee may:

a. reject the application pending the completion of the respective discipline or competency processes;

b. grant the application and accept the member's resignation instead of continued proceedings, and may impose conditions on the acceptance of same;

- c. impose conditions including a time period of up to five years during which the member will not apply for reinstatement;
 - d. direct that, upon any application for reinstatement, the Agreed Statement of Facts will be considered;
 - e. prior to any application for reinstatement, require the member to:
 - i. complete a remedial educational program;
 - ii. undertake to refrain from practicing in specified areas of law;
 - iii. obtain one or more of:
 - A. a psychiatric assessment;
 - B. a psychological assessment; and
 - C. an addictions assessment;
 - iv. obtain one or both of:
 - A. a medical examination; and
 - B. a medical opinion respecting the member's capability to practise law;
 - v. satisfy any other conditions, prior to application for reinstatement, that the Conduct Investigation Committee or Chairperson of the Competency Committee deems appropriate.
4. The decision of the Conduct Investigation Committee or the Chairperson of the Competency Committee mentioned in subrule (3) shall remain on the member's file and be considered upon any future application for reinstatement.
 5. If the Conduct Investigation Committee accepts a resignation pursuant to this Rule, the Agreed Statement of Facts and any decision rendered by the Conduct Investigation Committee shall be published in the same manner and to the same persons as the Notice required by Rule 1137.
 6. If the Competency Committee Chairperson accepts a resignation pursuant to this Rule, the Agreed Statement of Facts shall not be published in accordance with Rule 1137.
3. For the purposes of this application, the Committee is comprised of Mr. Jeffrey Baldwin and Ms. Suzanne Jeanson. Mr. Howe is represented by Patrick Zawislak, and the Committee is represented by Mr. Tim Huber. The Rules do not require a formal hearing of the matter, and the parties consented to proceed without one.
4. At all material times, Mr. Howe was a practicing member of the Law Society of Saskatchewan and was subject to the provisions of *The Legal Profession Act, 1990* and the Rules of the Law Society of Saskatchewan.
5. Mr. Howe is currently the subject of an outstanding formal complaint alleging that he is guilty of conduct unbecoming a lawyer in that he:
1. Did fail to adhere to the requirements governing joint retainers, namely he:
 - A. failed to advise C.A., before he began to act for her, that he was also acting for:
 - i. M.H., C.A.'s creditor; and
 - ii. C.A.'s lender, 599875 Saskatchewan Ltd., a corporation owned by his wife;

- B. failed to advise C.A., before he began to act for her, that no information received in connection with the matter from one client would be treated as confidential so far as any of the others were concerned;
 - C. failed to advise C.A., before he began to act for her, that if a conflict developed that could not be resolved, he could not continue to act for both or all of them and may have to withdraw completely;
 - D. failed to advise C.A. of the prior continuing relationship that he had with:
 - i. M.H., C.A.'s creditor; and
 - ii. 599875 Saskatchewan Ltd., a corporation owned by his wife,

and he failed to recommend that C.A. obtain independent legal advice in relation to the joint retainer; and
 - E. failed to obtain the written consent of C.A. in relation to all of the above.
2. Did continue to act for a party to a joint retainer between C.A., M.H., C.A.'s creditor, and 599875 Saskatchewan Ltd., a corporation owned by his wife, after C.A. fell into default in relation to a loan from 599875 Saskatchewan Ltd. by sending threatening letters to C.A. on behalf of 599875 Saskatchewan Ltd.;
 3. Did involve himself in a transaction between C.A., M.H. and 599875 Saskatchewan Ltd. in a way that made it difficult to distinguish in what capacity he was acting or in a way that gave rise to a conflict of interest or duty to a client;
 4. Did, through his associate 599875 Saskatchewan Ltd., enter into a transaction with his client C.A. while failing to:
 - A. disclose the nature of any conflicting interest or how a conflict might develop later;
 - B. consider whether the circumstances reasonably require that the client receive independent legal advice with respect to the transaction and with respect to the potential conflicts of interest; and
 - C. obtain the client's consent to the transaction after the client received such disclosure and legal advice.
 5. Did, through his associate 599875 Saskatchewan Ltd., loan money to his client C.A. while failing to:
 - A. disclose to the client the nature of all of the conflicting interests at play; and
 - B. require that the client:
 - i. receive independent legal representation.

6. Mr. Howe now expresses his desire to resign his membership in the Law Society of Saskatchewan instead of continuing the proceedings related to the formal complaint.

7. In support of his application to resign, Mr. Howe entered into an Agreed Statement of Facts, which includes an acknowledgment of the conduct and events which lead us to the current application. This Agreed Statement of Facts meets the requirement of Rule 1112(2)(b), and same is now attached to this decision.

8. In accordance with Rule 1112(2)(b), Mr. Howe applied to resign instead of continuing proceedings related to the complaint, to be effective January 1, 2023.

9. As all pre-requisites to the application have been fulfilled, the Committee considered whether to grant the application resign instead of continuing the proceedings related to the formal complaint. We hereby grant the application. We have also considered the facts that ground the formal complaint and the recommendation of Counsel for the Committee, and in doing so decline to order any conditions to attach to this order, with the exception that the resignation will be effective January 1, 2023.

10. There is no order as to costs.

Dated: December 8, 2022

“Jeffrey Baldwin”

“Suzanne Jeanson”

AGREED STATEMENT OF FACTS AND ADMISSIONS
BETWEEN WILLIAM HOWE AND
THE LAW SOCIETY OF SASKATCHEWAN

Jurisdiction

1. William Howe (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing Member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (hereinafter the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”).

2. The Member is currently subject to a Formal Complaint dated June 9, 2022 [**Tab 1**], comprised of the following allegations:

THAT William Howe, of the City of Regina, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

1. Did fail to adhere to the requirements governing joint retainers, namely he:

F. failed to advise C.A., before he began to act for her, that he was also acting for:

- i. M.H., C.A.’s creditor; and
- ii. C.A.’s lender, 599875 Saskatchewan Ltd., a corporation owned by his wife;

- G. failed to advise C.A., before he began to act for her, that no information received in connection with the matter from one client would be treated as confidential so far as any of the others were concerned;
 - H. failed to advise C.A., before he began to act for her, that if a conflict developed that could not be resolved, he could not continue to act for both or all of them and may have to withdraw completely;
 - I. failed to advise C.A. of the prior continuing relationship that he had with:
 - i. M.H., C.A.'s creditor; and
 - ii. 599875 Saskatchewan Ltd., a corporation owned by his wife,

and he failed to recommend that C.A. obtain independent legal advice in relation to the joint retainer; and
 - J. failed to obtain the written consent of C.A. in relation to all of the above.
2. Did continue to act for a party to a joint retainer between C.A., M.H., C.A.'s creditor, and 599875 Saskatchewan Ltd., a corporation owned by his wife, after C.A. fell into default in relation to a loan from 599875 Saskatchewan Ltd. by sending threatening letters to C.A. on behalf of 599875 Saskatchewan Ltd.;
 3. Did involve himself in a transaction between C.A., M.H. and 599875 Saskatchewan Ltd. in a way that made it difficult to distinguish in what capacity he was acting or in a way that gave rise to a conflict of interest or duty to a client;
 4. Did, through his associate 599875 Saskatchewan Ltd., enter into a transaction with his client C.A. while failing to:
 - D. disclose the nature of any conflicting interest or how a conflict might develop later;
 - E. consider whether the circumstances reasonably require that the client receive independent legal advice with respect to the transaction and with respect to the potential conflicts of interest; and
 - F. obtain the client's consent to the transaction after the client received such disclosure and legal advice.
 5. Did, through his associate 599875 Saskatchewan Ltd., loan money to his client C.A. while failing to:
 - C. disclose to the client the nature of all of the conflicting interests at play; and
 - D. require that the client:
 - i. receive independent legal representation.

3. The Member is the subject of one other open complaint initiated by the Law Society where the investigation phase is not yet complete. That investigation involves similar themes as the Formal Complaint described above relating to the activities of the Member's associate (599875 Saskatchewan Ltd.) loaning money to his clients.

4. Pursuant to Law Society of Saskatchewan Rule 1112, the Member wishes to resign his membership in the Law Society of Saskatchewan as an alternative to continued proceedings in relation to the pending Formal Complaint and in relation to the other outstanding investigation matter. This Agreed Statement of Fact is advanced for the purposes of allowing the Member's resignation "instead of continued proceedings", pursuant to Rule 1112(2)(b). In the event that the Application to Resign is granted, the allegation in the Formal Complaint **[Tab 1]** will be stayed and no further action will be directed in relation to the other pending complaint investigation.

Particulars of Conduct

The C.A. Matter

5. By way of an email dated July 26, 2020, Lawyer B, the new lawyer for C.A. (the "Complainant"), wrote to the Law Society on their client's behalf to seek feedback on an issue raised by C.A. In their email, Lawyer B. indicated that in 2015, the Member loaned \$300,000.00 from 599875 Saskatchewan Ltd. (the "Numbered Company") to the Complainant and her sister, S.A. to cover the cost of renovations completed by HC Ltd. (the "Contractor") on a cottage owned by the Complainant.

6. A mortgage was then subsequently registered against the cottage and the Complainant's property in Regina. Lawyer B. raised this issue as the complainant had missed some payments, and as a result, the Member was threatening to foreclose on one or both of the properties.

7. On August 14, 2020, the Complainant submitted a complaint against the Member. The Complainant stated that she had been introduced to the Member by the Contractor in 2015. She had hired the Contractor to complete renovations on her cottage after it suffered significant damage from flooding. The Complainant stated that she lost track of invoices and the final amount owed was larger than she anticipated. She then asked the Contractor for assistance when she was unable to pay his invoices totaling approximately \$300,000.00. In response, the Complainant advises that the Contractor phoned his lawyer, the Member, and explained the situation to him. The Complainant then reached out to the Member later that same day, July 24, 2015, to arrange a meeting with him.

8. The Member provided a response to the Complainant stating that non-conventional lenders would be required for the loan and that their rates would normally be 12-15% but that he had a lender who would be prepared to consider advancing the \$300,000.00 at 10% interest with interest only payments for 5 years. The full communication from the Member to the Complainant is attached at **Tab 2**.

9. The Complainant, left with few desirable options, accepted the offer proposed by the Member. The lender proposed by the Member offering the loan at the 10% rate was a numbered corporation owned by the Member's wife.

10. The Member facilitated the loan between C.A. and the numbered Company without informing C.A. that the Numbered Company was owed by the Member's wife on the terms

originally discussed being \$300,000.00 at a rate of 10% calculated semi-annually. Interest only payments were contemplated meaning that after 5 years C.A. would still owe all of the principal and would have paid \$150,000.00 in interest. C.A. provided a second mortgage on her cottage, a second mortgage on her primary residence and a promissory note to secure the loan.

The Solicitor/Client Relationship

11. The Member has stated that he did not believe that the Complainant was his client; however, this statement is inconsistent with his actions on the file which, at best, made his role confusing. It was open to C.A. to believe that the Member was acting as her lawyer, and she did hold that belief.

12. For example, the Member referred to himself as C.A.'s solicitors ("...we are the solicitors for C.A....") in correspondence to the Contractor on which C.A. was copied. C.A. also paid all of the legal fees associated with the loan and received a bill from the Member detailing time spent on stating that time was spent on "professional services rendered," "taking instructions" and "reporting to client and all related services thereto". The cover letter accompanying the account states "we trust that our have found our services to your satisfaction".

Conflicting of Interests

13. The Member sent C.A. to Lawyer P for independent legal advice in relation to the loan. No Certificate of Independent Legal Advice was requested by the Member or prepared by Lawyer P. C.A. states that she was advised that the Numbered Corporation belonged to the Member's wife after the documents were executed. Independent legal representation was not suggested by the Member or received by C.A. in this situation wherein the Member was the lawyer for the creditor, the apparent lawyer for the debtor and an associate (spouse) of the lender.

14. Conflicting interests were further highlighted when, in 2019, C.A. fell behind on payments and the Member assumed the roll of collector on behalf of the Numbered Company. The Member wrote C.A. on behalf of the Numbered Company demanding payment and threatening the commencement of foreclosure proceedings. C.A. caught up on the payments, but fell behind again in 2020. Further threats of legal action were forwarded to C.A. by the Member on behalf of the Numbered Company. The Member did stipulate that if foreclosure or judicial sale were to be sought in relation to the properties, that another firm would be engaged. This approach would be consistent with a party who was unable to act against a debtor in enforcement proceedings due to having acted for the debtor in the creation of the loan agreement giving rise to those proceedings.

Prior History

15. The Member has one prior finding of conduct unbecoming from 2012 wherein he was found guilty of conduct unbecoming in relation to the following charge:

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

The Member received a reprimand and was ordered to pay costs of \$1,645.00.