

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF W. JOHN ANDRESEN,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee:

Hugh Sommerville, QC, Bencher

Appearances:

Counsel for the Law Society – Candice Ross
Counsel for W. John Andresen – John Hooker

Hearing Date:

October 4, 2016

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On October 4, 2016, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a number of citations against W. John Andresen.
2. Counsel for the member and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise, and the hearing proceeded.

3. The hearing was held in public.
4. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

Statement of Facts and Admission of Guilt

5. The Statement of Facts and Admission of Guilt is attached hereto as Exhibit "A" (the "Agreed Statement"). This Agreed Statement has been found to be in an acceptable form by a Conduct Committee Panel on September 12, 2016, and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
6. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Mr. Andresen and confirming Mr. Andresen's understanding that the Bencher was not bound by the joint submission on sanction, the Bencher confirmed the Agreed Statement of Facts and the Admission of Guilt constituted a finding of conduct deserving of sanction on all 12 citations pursuant to s. 49 of the *Legal Profession Act*.
7. The only question for determination by this Committee was one of appropriate sanction.

Discussion on Sanction

8. The LSA and Mr. Andresen's counsel made a joint submission on sanction, seeking a reprimand and actual costs of the hearing.
9. The LSA advised the Committee that Mr. Andresen had no prior record, and acknowledged his co-operation.
10. Mr. Andresen's counsel confirmed the lack of record, and further pointed to the member's circumstances as set out in the "Agreed Statement". It was argued that Mr. Andresen was dealing with the aftermath of the High River flood of 2013, that he had to move his office twice within a year, and that his failures to fulfill his duties were not intentional. He had subsequently co-operated with the LSA, and actively participated in the Practice Review program.

11. Both the LSA and Mr. Andresen rightly noted that Mr. Andresen in mitigation had freely admitted his error after the matter was reported. The approach taken by both Mr. Andresen and the LSA in dealing with this matter through a single Bencher hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs. This is commendable.
12. In ruling on sanction, the Committee considered that the member had been found guilty of conduct deserving of sanction on 12 citations. Four citations involved failing to fulfill an undertaking within a reasonable time, four citations involved failing to respond to the other side of a transaction within a reasonable time, and four citations involved failing to respond promptly to the LSA. The Committee noted that these are not trivial complaints.
13. A lawyer's obligation to fulfill undertaking obligations is fundamental to real estate and other commercial practice. An undertaking that is not completed within a reasonable time is simply not completed.
14. Failing to respond reasonably to communications undermines the commercial process confidence in the profession. You may intend to comply with your undertakings, but no one is sure of that if you will not talk to them.
15. Failing to reply promptly to the LSA brings up concerns of governability, the ability of the LSA to control its members, and that can lead to disbarment.
16. Having considered the seriousness of the citations, the Committee went on to look a number of mitigating factors that had placed before it. Also important was the fact that a joint submission had been made on sanction, for which the Committee allowed a significant deference.
17. The Committee considered that the member was 39 years at bar, 12 years a Q.C., with no prior discipline record.
18. The problems seemed to have been initiated by the disastrous and historic flooding of the community of High River.
19. It was submitted, and accepted, that these were not intentional breaches in bad faith, but rather that the citations represented a difficulty Mr. Andresen had in coping with his obligations after unforeseen disaster.
20. The member had co-operated with the LSA once engaged in communication, admitted his guilt, and actively participated in Practice Review.
21. In all the circumstances, the Committee accepted and imposed the suggested sanction of a reprimand and the payment of the actual costs of the hearing.

Concluding Matters

- 22.** The following reprimand was delivered orally by the Bench:

Mr. Andresen, to say that you are experienced counsel is an understatement. You are 39 years at bar, 12 years a Q.C., with no prior discipline record. You certainly didn't look forward to receiving a lecture at this stage in your career. But with membership in our profession comes duty. A duty to fulfill our word. A duty to reply to other counsel. A duty to reply to the Law Society.

I have no doubt that extreme strain was placed on you and your staff during a time of crisis, but your duties continue.

One of the most important reasons for the duty to communicate is to let others know when you are having honest difficulty meeting your obligations. If you take a moment to speak out, you might find a receptive ear. If you take a moment to reach out, you may find a helping hand.

Thus ends the Reprimand.

- 23.** The Member must pay the actual costs of the Hearing, in the sum of \$2,304.23, no later than November 30, 2016.
- 24.** Hearing exhibits shall be made available to the public, with the exception that they shall be redacted to prevent the disclosure of the identity of third parties and to prevent the disclosure of confidential or privileged information.
- 25.** There shall be no Notice to the Profession issued.
- 26.** There will be no Notice to the Attorney General.

Dated at the City of Calgary in the Province of Alberta, this 29th day of November, 2016 by:

Hugh Sommerville, QC

EXHIBIT "A"

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

W. JOHN ANDRESEN,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "Law Society") on April 28, 1977.
2. My present status with the Law Society is Active/Practicing.
3. I have practiced in High River, Alberta from April 28, 1977 to present.
4. I received my QC in 2004.
5. My practice comprises Real Estate Conveyancing (49%), Matrimonial/Family (18%), Criminal (6%), Estate Planning & Administration (18%), Corporate (7%), Civil Litigation (1%), and Other (1%).

CITATIONS

6. On March 2, 2016 the Conduct Committee Panel referred the following conduct to hearing:
 - a. **Complaint File CO[●] [K.L.]**
 1. It is alleged that you failed to fulfill an undertaking given to K.L., within a reasonable period of time, and that such conduct is deserving of sanction;
 2. It is alleged that you failed to answer with reasonable promptness all communications from another lawyer, K.L., and that such conduct is deserving of sanction;
 3. It is alleged that you failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

b. Complaint File CO[•] [M.L.]

4. It is alleged that you failed to fulfill an undertaking given to M.L., within a reasonable period of time, and that such conduct is conduct deserving of sanction;
5. It is alleged that you failed to honour a trust condition accepted from M.L., within a reasonable period of time, and that such conduct is deserving of sanction;
6. It is alleged that you failed to answer with reasonable promptness all communications from another lawyer, M.L., and that such conduct is conduct deserving of sanction;
7. It is alleged that you failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

c. Complaint File CO[•] [M.L.]

8. It is alleged that you failed to honour a trust condition accepted from M.L., within a reasonable period of time, and that such conduct is deserving of sanction;
9. It is alleged that you failed to answer with reasonable promptness all communications from another lawyer, M.L., and that such conduct is conduct deserving of sanction
10. It is alleged that you failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

d. Complaint File CO[•] [C.H.]

11. It is alleged that you failed to fulfill an undertaking given to C.H., within a reasonable period of time, and that such conduct is deserving of sanction;
12. It is alleged that you failed to answer with reasonable promptness all communications from another lawyer, C.H., and that such conduct is conduct deserving of sanction;
13. It is alleged that you failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

Complaint File CO[●] [K.L.]

Facts

14. This set of citations arises from a complaint by [K.L.] in relation to a real estate transaction regarding a sale of property from my client, [●] to [K.L.]'s clients [●] and [●].
15. On August 2, 2013, I gave my undertaking that, upon receipt of the cash to close, I would discharge from title all Non-permitted Registrations (specifically, my client's Mortgage and Caveat re: Assignment of Rents ("Caveat")) and provide [K.L.] with a Certified Copy of Title evidencing the discharge.
16. [K.L.] made a complaint to the Law Society on August 18, 2014 as the Mortgage and Caveat had not been discharged.
17. On September 26, 2013, [K.L.] provided me with the cash-to-close for the transaction, and the Transfer of Land was registered on September 25, 2013.
18. On April 9, 2014, I received a letter from [K.L.] confirming a discussion with my assistant and seeking a letter confirming that Royal Trust would be providing my office with a Discharge of Mortgage and Caveat.
19. The Withdrawal and Discharge of Caveat was executed by Royal Trust Corporation of Canada ("Royal Trust") on May 28, 2014.
20. On July 8, 2014, I received a call from [K.L.]. By email, on July 8, 2014, I advised [K.L.] that I had not received the discharge from Royal Trust with respect to the Mortgage and Caveat. I further advised that the documents had been executed and mailed to my client who did not realize that I needed them to complete the transaction.
21. I registered the discharges on August 14, 2014 and provided [K.L.] with a copy of the Certificate of Title on August 18, 2014 evidencing discharge.
22. I was personally served with correspondence from the Law Society on August 29, 2014.
23. I drafted a letter to the Law Society dated September 15, 2014. While I understood this letter to have been faxed the same day, the Law Society did not receive this letter.
24. The Law Society sent a section 53 demand letter to me dated October 14, 2014. I do not recall receiving this letter. I did not respond to this letter.
25. The Law Society made further attempts to obtain a response from me, but I did not respond.
26. In July 2015, I was contacted by [D.C.] of the Law Society's Practice Review department. [D.C.] inquired about my failure to respond to the Law Society. I provided [D.C.] with a copy of my September 15, 2014 correspondence.
27. The Law Society sent letters to me dated July 10, 2015 and November 2, 2015 requesting evidence that the September 15, 2014 correspondence had been sent to the Law Society. I did not respond to either of these letters.

28. On December 8, 2015, the Law Society sent a letter to me requesting a copy of my file in relation to the four files that are the subject of these complaints.
29. Following a discussion with [M.R.] of Practice Review, I provided all four files to the Law Society in early January.

Conduct - Admissions

30. I admit that I failed to fulfil the undertaking which I gave to [K.L.], within a reasonable period of time, and that my conduct is deserving of sanction.
31. I admit that I failed to answer with reasonable promptness the communications which I received from [K.L.] and that such conduct is deserving of sanction.
32. I admit that I failed to respond promptly and completely to communications from the Law Society, and as such, my conduct is deserving of sanction.

Complaint File CO[•] [M.L.]

Facts

33. This set of citations arises from a complaint by [M.L.] in relation to a real estate transaction regarding the sale of a property from my client, [D.D.], to [M.L.]'s client, [K.S.].
34. On October 28, 2013, I gave my undertaking to, upon receipt of the cash-to-close, discharge from title all Non-permitted Registrations (specifically, my client's Mortgage and a caveat re: purchaser's interest of [D.L.] and [S.L.] ("Caveat")) and to provide [M.L.] with a Certified Copy of Title evidencing the discharge.
35. I received the cash-to-close from [M.L.] on November 4, 2013.
36. On January 14, 2014, I submitted a Discharge of Mortgage and Statutory Declaration Regarding Lapsing of Caveat to the Land Titles Office. Due to an error in the Statutory Declaration, the documents were rejected.
37. [M.L.] wrote letters to me dated December 4, 2013, January 9, February 4, March 4, April 4, May 4 and June 4, 2014 requesting status of the discharge of the Non-Permitted Registrations. I have no record on my file of any correspondence from [M.L.] past February, 2014.
38. On February 4, 2014, my assistant wrote a note back to [M.L.] advising that the documents had been rejected due to error and that she would resubmit the documents the following day. Other than this note from my assistant, I did not respond to the correspondence from [M.L.].
39. The documents were resubmitted on February 5, 2014 but were again rejected due to an error in the Notice to Take Proceedings which had been prepared and served by another lawyer prior to me acting for [D.D.].
40. On February 6, 2014, my assistant contacted Mr. and Mrs. [L] and they agreed to execute a Discharge of Caveat. On February 8, 2014, Mr. and Mrs. [L] attended my office and executed the Discharge of Caveat.

41. On July 17, 2014, [M.L.] made a complaint to the Law Society with respect to my failure to honour the undertaking.
42. My file was misplaced during my relocation back after the flood. As a result, the discharge documents for the Mortgage and the Caveat were not submitted to the Land Titles Office until August 5, 2014. The Mortgage and Caveat were discharged on August 15, 2014.
43. On September 9, 2014, I provided [M.L.] with a Certificate of Title evidencing discharge of the Mortgage and Caveat, pursuant to my undertaking.
44. I was first contacted by the Law Society regarding this complaint on July 29, 2014, but did not respond.
45. I was personally served with a section 53 demand letter from the Law Society on August 29, 2014 and provided a response on September 9, 2014.

Conduct – Admissions

46. I admit that I failed to fulfil the undertaking which I gave to [M.L.], within a reasonable period of time, and that my conduct is deserving of sanction.
47. I admit that I failed to answer with reasonable promptness the communications which I received from [M.L.] and that such conduct is deserving of sanction.
48. I admit that I failed to respond promptly and completely to communications from the Law Society, and as such, my conduct is deserving of sanction.

Complaint File CO[●] [M.L.]

Facts

49. This set of citations arises from a complaint by [M.L.] in relation to a real estate transaction regarding the sale of a property from my client, [R.M.], to [M.L.]'s clients, [J] and [M] [B].
50. The closing of this transaction occurred on November 23, 2012.
51. After the closing of this transaction, a defect was discovered in the survey plan of the lot being purchased. The defect caused additional legal fees to be incurred by [M.L.].
52. [M.L.] discussed this matter with my assistant and advised that she did not feel that her client should be responsible to pay the additional legal fees as the defect was the seller's responsibility.
53. On December 5, 2012, [M.L.] provided my office with a transfer and consent to register plan executed by her clients on the trust condition that I undertake to pay her legal fees and costs to re-register security and discharge of her client's mortgage, if any.
54. On October 7, 2013, [M.L.] sent to me further documents required to register the subdivision application on the same trust condition.

55. The documents provided to me by [M.L.], under trust conditions, were registered.
56. [M.L.] provided me with her invoice on November 15, 2013 and sent reminder notices to me every month regarding the outstanding invoice.
57. I have no record of receiving an invoice from [M.L.] or any of her reminders.
58. [M.L.] made a complaint to the Law Society on July 25, 2014.
59. After [M.L.] provided the invoice to my office 3 more times, and the Law Society followed up with me regarding payment, I paid [M.L.]'s invoice on November 7, 2014.

Conduct – Admissions

60. I admit that I failed to fulfil the trust condition which I accepted from [M.L.], within a reasonable period of time, and that my conduct is deserving of sanction.
61. I admit that I failed to answer with reasonable promptness the communications which I received from [M.L.] and that such conduct is deserving of sanction.
62. I admit that I failed to respond promptly and completely to communications from the Law Society, and as such, my conduct is deserving of sanction.

Complaint File CO[•] [C.H.]

Facts

63. This set of citations arises from a complaint by [C.H.] in relation to a real estate transaction regarding the sale of a property from my clients, [R] and [J.B], to [C.H.]'s clients, [D] and [C.F.].
64. At the time of closing, I provided [C.H.] with my undertaking to use best efforts, short of a court application, to obtain the Real Property Report with compliance, encroachment/relaxation agreements, if necessary from the Town of High River and to hold the sum of \$2,500 until completion of the undertaking.
65. I determined that the Town of High River required an encroachment agreement be registered. I obtained an encroachment agreement from the Town of High River and provided it to [C.H.] on June 14, 2013 for his clients to execute. [C.H.] returned the executed encroachment agreement on June 19, 2013.
66. My office was flooded on June 19, 2013, so I was not able to submit the encroachment agreement to the Town of High River until November 6, 2013.
67. The encroachment agreement was signed by the Town of High River and sent to Land Titles for registration on March 5, 2014. Land Titles rejected the document.
68. [C.H.]'s assistant contacted my office in early April 2014 to inquire as to the status and was advised of the Land Titles rejection by my assistant. [C.H.]'s assistant requested details of the rejection and the DRR rejection notice. My office did not provide [C.H.]'s office with the requested information or documents.
69. On June 2, 2014, [C.H.] made a complaint to the Law Society.

70. I received a letter from the Town of High River dated July 11, 2014 stating that since the Planning and Development Services had not provided the documents to me on a timely basis, they decided to forego the need for the registration of an encroachment agreement and provided a Real Property Report with compliance to me.
71. I instructed my assistant, T.W., to fax a letter dated July 11, 2014 to [C.H.] providing the Town of High River's letter and the Real Property Report. I believed that this had been completed, however, the Law Society, in reviewing my file, discovered that the fax was attempted but was never successful due to repeated busy signals. The Law Society ultimately provided [C.H.] with the letter from the Town of High River and the Real Property Report.
72. I was first asked to respond to the Law Society regarding this complaint on August 28, 2014. I did not provide the Law Society with my response.
73. In July 2015, I was contacted by [D.C.] of the Law Society's Practice Review department. [D.C.] inquired about my failure to respond to the Law Society. I provided [D.C.] with a copy of September 9, 2014 correspondence to the Law Society. I had believed that my assistant had sent the September 9, 2014 correspondence to the Law Society; however, the Law Society did not receive it.
74. On September 8, 2015, the Law Society requested further information from me. I did not respond. Practice Review followed up with me regarding the September 8, 2015 and I advised that I had not received the request from the Law Society. The Law Society resent it to me on October 8, 2015 via email. I did not respond. On November 2, 2015, the Law Society sent me a further request for the same information. I did not respond. On December 8, 2015, the Law Society requested copies of my files in relation to several complaints, including [C.H.]'s. I provide the requested files in early January 2016, following a discussion with Practice Review.

Conduct – Admissions

75. I admit that I failed to fulfil the undertaking which I gave to [C.H.], within a reasonable period of time, and that my conduct is deserving of sanction.
76. I admit that I failed to answer with reasonable promptness the communications which I received from [C.H.] and that such conduct is deserving of sanction.
77. I admit that I failed to respond promptly and completely to communications from the Law Society, and as such, my conduct is deserving of sanction. *I responded as soon as I was aware of the problems with the Law Society.*

Other Relevant Information

78. My office was destroyed in the Alberta flood of June 20, 2013.
79. The town of High River was on mandatory evacuation as of June 20, 2013 with the first area being granted access on June 28, 2013. When first accessing my building, it was obvious to me that I had a lot of work to make my office operational again. We had no power, phones or internet. We set to work removing all the furniture as it was unsalvageable and packed up all the files into file boxes.

80. I was able to secure office space a few blocks away that was not badly damaged. We set to work cleaning out the new office space and readying ourselves for another move. We used plastic folding tables and chairs to attempt to set up a workable office. We still had no phones or internet. We worked with cell phones, and I purchased a mobile internet stick to access any online applications. Our server was down, and we had no fax. Telus is housed in a building that was underwater for a large portion of time during and after the flood. We were only a block away from Telus, so our resources were compromised. We finally secured a phone system and internet about three weeks after we returned to High River.
81. In the middle of August, 2013, we were notified that we were required to vacate our temporary office by no later than the middle of September.
82. I again searched for office space for myself and my staff and was able to move again on September 5, 2013. This building was just getting operational again and had no phone, fax or internet when we moved in. We were also in three offices throughout the building, which was a business center, as there were no offices together. We had to wait about three weeks to have our phone line transferred so we once again were required to operate with cell phones.
83. I was finally able to return to my original office in February, 2014. I have a lot of files, and moving three times within eight months caused severe disruption and problems with continuity of the care of the real estate files.

Involvement with Practice Review

84. As a result of these complaints, I was contacted by the Law Society's Practice Review department. They reviewed my office and practice initially on July 7, 2015 and made a number of suggestions as to how I could improve my practice.
85. I have met with Practice Review on September 2, 2015, October 6, 2015, December 8, 2015, January 11, 2016, February 9, 2016, April 12, 2016, and August 9, 2016. I have fully cooperated with Practice Review and have implemented their recommendations to improve my practice.
86. Practice Review is also assisting me toward my ultimate transition from the practice of law.

CONCLUSION

87. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
88. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.

89. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 25TH DAY OF August, 2016.

[J.H.]

"W. John Andresen"

WITNESS

W. John Andresen