

**IN THE MATTER OF PART 3 OF THE  
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

**AND**

**IN THE MATTER OF HEARING REGARDING  
THE CONDUCT OF MERCY AMANOH  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Robert Philp, QC – Chair  
Buddy Melnyk, QC – Bencher  
Michael Mannas – Public Adjudicator

**Appearances**

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)  
Amy Cooper – Counsel for Mercy Amanoh

**Hearing Dates**

March 2-4, 2020

**Hearing Location**

LSA Office, at 700, 333 - 11 Avenue SW Calgary, Alberta

**HEARING COMMITTEE REPORT**

**Introduction**

1. Mercy Amanoh represented the client, FH, in a real estate transaction related to the sale of the client's matrimonial home. In addition, she acted for a number of vendors, purchasers, and mortgage companies in relation to several real estate transactions in which it was alleged that she unknowingly assisted others in carrying out fraudulent mortgage activities.
2. The Hearing Committee (Committee) convened a hearing into Ms. Amanoh's conduct in relation to the following citations:

**CO20172455**

1. It is alleged Mercy A. Amanoh failed to conscientiously and diligently represent the best interests of her client, FH, and that such conduct is deserving of sanction;
2. It is alleged Mercy A. Amanoh acted in a conflict of interest in relation to her client, FH, and that such conduct is deserving of sanction;
3. It is alleged Mercy A. Amanoh failed to appropriately supervise her staff and that such conduct is deserving of sanction;

### **CO20180768**

4. It is alleged Mercy A. Amanoh failed to act in a thorough, conscientious, and diligent manner in providing legal services to her clients and that such conduct is deserving of sanction; and
5. It is alleged Mercy A. Amanoh unknowingly assisted others in carrying out fraudulent mortgage activities and that such conduct is deserving of sanction.

### **Preliminary Matters**

3. There was no objection to the jurisdiction or the composition of the Committee.
4. Ms. Amanoh applied for a private hearing because the evidence to be presented involved matters covered by solicitor-client privilege. Her counsel argued that was not up to Ms. Amanoh to waive the privilege, the privilege is the client's to waive, and the waivers had not been provided.
5. LSA counsel noted that Citations 4 and 5 were going to be dealt with first, and there were no members of the public in attendance. Further, FH herself would later be in attendance to testify with respect to Citations 1-3, and could address any concerns at that time, if she had any. In addition, LSA counsel noted the LSA's standard redaction process, which applies to both exhibits and transcripts. LSA counsel submitted that there were adequate protections in place, and that the hearing did not need to be in private.
6. The Committee has a mandate to act in the public interest. Once citations have been laid, the transparency of the disciplinary proceeding prevails. Public confidence in the LSA as a self-regulatory body is critical.
7. It is well-established that hearings ought to be held in public unless a compelling privacy interest requires protection, and then only to the extent necessary. The desirability for public scrutiny is then satisfied. The Committee noted that many of the documents at issue are, in fact, public or nearly public documents, including the instruction letters from the various banks and Land Titles records.
8. The Committee was satisfied that the LSA's redaction policy would provide necessary protection to the Complainant and over other matters of solicitor-client privilege. Accordingly, the Committee directed that the hearing be held in public, subject to any potential witness, including the Complainant with respect to Citations 1 to 3, making an application for a private hearing.
9. Ms. Amanoh made an additional preliminary application. She asked to testify first, notwithstanding that the onus is on the LSA to establish her guilt with respect to the citations. However, counsel submitted that Ms. Amanoh would like to provide the Committee with her first-hand evidence about what happened and what she has done to respond.

10. Counsel for the LSA objected. Counsel submitted that it is important for public transparency that the LSA meet its burden of proof with respect to the alleged conduct and whether it is deserving of sanction. It is also important for Ms. Amanoh to hear all of the evidence put forward by the LSA, so that she can answer the case made against her. If she testifies first, she would not have that opportunity.
11. The Committee denied the application. In this disciplinary matter, Ms. Amanoh is a compellable witness and cannot refuse to testify. However, allowing Ms. Amanoh to testify first would not allow the testing of her evidence against the testimony of the LSA's witnesses. The Committee directed that the hearing proceed in the usual fashion with the LSA presenting its witnesses first.
12. An Agreed Exhibit binder was entered at the start of the proceedings, and additional exhibits were filed during the hearing. Throughout, there was agreement on all items tendered as exhibits. There was no Agreed Statement of Facts. The LSA proceeded with its case, electing to call evidence on Citations 4 and 5 first and then calling evidence in relation to Citations 1, 2, and 3.

#### **Relevant Evidence on Citations 4 and 5**

13. The LSA called BW, a former Inspector with the Calgary Police Service with 35 years of service. He had conducted some 60 investigations on behalf of the LSA. Through an investigation, Ms. Amanoh was identified as the lawyer involved in what can be described as suspicious real estate transactions.
14. BW interviewed Ms. Amanoh and was given access to some 42 real estate files from Ms. Amanoh's office. BW's investigation focused on eight files, which are summarized in Exhibit 5. Exhibit 5 also contained comments made by Ms. Amanoh in relation to the eight transactions that are the subject of Citations 4 and 5. Those transactions, with Ms. Amanoh's comments, are reproduced here, with some redactions:
  - 1) **Matter 3316** was referred to me by [C] and I represented the purchasers and the [Bank]. The Residential Purchase Contract (RPC) contained a closing date of September 30, 2016 with a purchase price of \$114,000.00. The property had been transferred to a previous buyer on July 22, 2016 for \$10,000.00 and then transferred to my clients on October 20, 2016 for \$114,000.00. A [Bank] mortgage for \$105,062.00 was registered on title on October 20, 2016.
    - a) I did not notice the \$104,000.00 increase in value in 3 months
    - b) The investigator provided a copy of the [Bank] Solicitor Instructions that read:
      - You are to take all steps that would be taken by a careful and prudent solicitor on behalf of a client; including, without limitation:

- Advising us of any material fact known to [sic] which might affect our decision to give the credit secured by the collateral mortgage;
  - Advise us of any significant escalation in the value of the Property over a short period of time...
- c) I did not review the instructions on every file however did so periodically. I did not report to [Bank] the transfer of title within 3 months or the increase in value of \$104,000.00. I was not thinking of the possibility of a fraudulent transaction at the time and presumed the [Bank] had conducted an appraisal of the property. In hindsight and with the benefit of Practice Review, I could have given it better scrutiny.
- 2) **Matter 3266** was referred to me by [C] and I represented the purchaser and [Bank]. The seller was [R]. The RPC contained an amended closing date of August 2, 2016 and a purchase price of \$112,500.00. The property title was transferred to [R] on August 17, 2016 for \$20,000 and transferred to my client on August 19, 2016 for \$112,500.00. A [Bank] mortgage of \$97,346.00 was registered on title on August 19, 2016.
- a) The investigators brought to my attention that there had been a \$92,500.00 increase in value within 2 days. I did not represent [R] in his purchase of the property and I was not aware that it was bought and sold within 2 days, and I did not notice the increase in price within 2 days.
- b) The [Bank] Instructions to Lawyers reads:
- UNUSUAL ACTIVITY:*
- i. Notify the Bank if there are any unusual circumstances to suggest that the amount paid by the purchaser for the property exceeds substantially the fair market value of the property;*
- ii. Notify the Bank of any recent transfers of the same property. In particular, of any transfers of the same property that occurred within the preceding 12 months and specify to the Bank the amount of consideration recorded at the Land Titles Registry for such transfers;*
- iv. Report to the Bank any suspicious circumstances or reasons to suspect the validity or propriety of the transaction.*
- c) The [Bank] instructions were contained within my client file. I did not notice what I considered to be any unusual circumstances and so I did not report to the [Bank] the transfer of title within 2 days or the increase in value of \$102,500.00. I acknowledged I signed off on the Lawyer/Notary Report to [Bank] dated November 23, 2016, including point 4 which reads:
- In accordance with your instructions, we confirm and acknowledge completion of the following...

4. Advised the Bank of any unusual circumstances that may indicate a fraud or misrepresentation including any recent sales (within the last 12 months) of the same property at substantially higher/lower values, any recent discharge, mortgages or title transfers (within the last 12 months), any disbursements to parties other than usual payees, or any disbursement to a mortgage broker or someone arranging additional financing.

d) I was not thinking of the possibility of a fraudulent transaction at the time and presumed the [Bank] had conducted an appraisal of the property.

3) **Matter 3221** was referred to me by [C], the realtor who represented both the vendor and purchaser for the transaction. I represented the purchaser and the [Bank]. The RPC contained a closing date of June 10, 2016 with a purchase price of \$95,000.00. The property title had been transferred to the seller on March 31, 2016 for \$30,000.00 and then transferred to my client on June 14, 2016 for \$95,000.00. A [Bank] mortgage for \$93,499.00 was registered on title the same day.

a) I did not notice the \$65,000.00 increase within 10 weeks.

b) I did not report to the [Bank] the transfer of title within 10 weeks or the increase in value of \$65,000.00. I signed off on the Lawyer/ Notary Report to [Bank] dated June 20, 2016, including Point 4 which reads:

In accordance with your instructions, we confirm and acknowledge completion of the following...

4. Advised the Bank of any unusual circumstances that may indicate a fraud or misrepresentation including any recent sales (within the last 12 months) of the same property at substantially higher/lower values, any recent discharge, mortgages or title transfers (within the last 12 months), any disbursements to parties other than usual payees, or any disbursement to a mortgage broker or someone arranging additional financing.

c) In hindsight and with the benefit of Practice Review, I understand that an increase in price in a short time can be a sign of fraud. In this case I was of the understanding that the seller was buying properties and renovating them for a profit, so in isolation the increase in value was not necessarily a red flag of fraud for me.

d) I was asked if the increase in value merited further enquiries and I stated I did not make further enquiries with my client "and I wouldn't ordinarily go out of my way to ask questions of people buying properties if they have signed a contract" or question a client as to whether they felt the property price was appropriate. In hindsight and with the benefit of Practice Review, I understand that I did not fulfill my responsibility to represent the interests of [Bank] as per the

instructions. Had I thought there was fraudulent activity occurring I would have made more enquiries.

4) **Matter 3298** was referred to me by [C], the realtor who represented both the vendor and purchaser. I represented the purchaser and the [Bank]. The RPC indicated a closing date of September 22, 2016 and a purchase price of \$124,000.00. The property title had been transferred to the seller on February 24, 2016 for \$29,500.00 and transferred to my client on October 11, 2016 for \$127,000.00. A [Bank] mortgage for \$99,200.00 was registered on title the same day.

a) I did not notice the \$97,500.00 increase in 7.5 months. I believed the property had been renovated and my purchaser client advised me it would be a rental property. I did not think there was anything suspicious about this transaction.

b) The [Bank] Instructions to Lawyers reads:

*UNUSUAL ACTIVITY:*

*i. Notify the Bank if there are any unusual circumstances to suggest that the amount paid by the purchaser for the property exceeds substantially the fair market value of the property;*

*ii. Notify the Bank of any recent transfers of the same property.*

*In particular, of any transfers of the same property that occurred within the preceding 12 months and specify to the Bank the amount of consideration recorded at the Land Titles Registry for such transfers;*

*iv. Report to the Bank any suspicious circumstances or reasons to suspect the validity or propriety of the transaction.*

c) I did not report to the [Bank] the transfer of title within 7.5 months or the increase in value of \$97,500.00. I signed off on the Lawyer/ Notary Report to [Bank] dated October 20, 2016, including point 4 which reads:

In accordance with your instructions, we confirm and acknowledge completion of the following...

4. Advised the Bank of any unusual circumstances that may indicate a fraud or misrepresentation including any recent sales (within the last 12 months) of the same property at substantially higher/lower values, any recent discharge, mortgages or title transfers (within the last 12 months), any disbursements to parties other than usual payees, or any disbursement to a mortgage broker or someone arranging additional financing.

5) **Matter 3079** was referred to me by [C], the realtor who represented both the vendor and the purchaser. I represented the purchaser and the [Bank]. The RPC indicated a closing date of December 14, 2015 and a purchase price of \$110,000.00. The property title had been transferred to [B] on July 21, 2015

for \$78,000.00 and transferred to my client on January 14, 2016 for \$110,000.00. A [Bank] mortgage for \$101,376.00 was registered on title on the same day.

a) The [Bank] Instructions to Lawyers reads:

*UNUSUAL ACTIVITY:*

- i. Notify the Bank if there are any unusual circumstances to suggest that the amount paid by the purchaser for the property exceeds substantially the fair market value of the property;*
- ii. Notify the Bank of any recent transfers of the same property. In particular, of any transfers of the same property that occurred within the preceding 12 months and specify to the Bank the amount of consideration recorded at the Land Titles Registry for such transfers;*
- iv. Report to the Bank any suspicious circumstances or reasons to suspect the validity or propriety of the transaction.*

b) I did not report to the [Bank] the transfer of title within 12 months, even though I had handled [B's] purchase of the same property 6 months earlier. I believed the property had been renovated. I did not think there were unusual circumstances here. I signed off on the Lawyer/Notary Report to [Bank] dated March 22, 2016, including point 4 which reads:

In accordance with your instructions, we confirm and acknowledge completion of the following...

4. Advised the Bank of any unusual circumstances that may indicate a fraud or misrepresentation including any recent sales (within the last 12 months) of the same property at substantially higher/lower values, any recent discharge, mortgages or title transfers (within the last 12 months), any disbursements to parties other than usual payees, or any disbursement to a mortgage broker or someone arranging additional financing.

c) In hindsight and with the benefit of Practice Review I understand that price increases and recent transfers alone can be flags of fraud. I should have paid greater attention to any transactions in the past twelve months and any escalations of price and reported them to [Bank].

6) **Matter 3151/3157** was referred to me by [C], the realtor who represented both the vendor and the purchaser. I represented the seller, [P], the purchasers, and the [Bank]. The RPC indicated a closing date of March 7, 2016 and a purchase price of \$110,000.00. The property title had been transferred to [P] on February 2, 2016 for \$55,000.00 and transferred to my client on March 14, 2016 for \$110,000.00. A [Bank] mortgage for \$88,000.00 was registered on title the same day.

- a) I am unsure if I noticed the \$55,000.00 increase within 6 weeks. I did not flag it as an unusual circumstance at the time.
- b) The [Bank] Instructions to Lawyers reads:
  - UNUSUAL ACTIVITY:*
  - i. Notify the Bank if there are any unusual circumstances to suggest that the amount paid by the purchaser for the property exceeds substantially the fair market value of the property;*
  - ii. Notify the Bank of any recent transfers of the same property. In particular, of any transfers of the same property that occurred within the preceding 12 months and specify to the Bank the amount of consideration recorded at the Land Titles Registry for such transfers;*
  - iv. Report to the Bank any suspicious circumstances or reasons to suspect the validity or propriety of the transaction.*
- c) I did not report to the [Bank] the transfer of title within 6 weeks or the \$55,000.00 increase in value. I signed off on the Lawyer/ Notary Report to [Bank] dated April 5, 2016, including point 4 which reads:
  - In accordance with your instructions, we confirm and acknowledge completion of the following...
  - 4. Advised the Bank of any unusual circumstances that may indicate a fraud or misrepresentation including any recent sales (within the last 12 months) of the same property at substantially higher/lower values, any recent discharge, mortgages or title transfers (within the last 12 months), any disbursements to parties other than usual payees, or any disbursement to a mortgage broker or someone arranging additional financing.
- d) In hindsight and with the benefit of Practice Review I understand that price increases and recent transfers alone can be flags of fraud. I should have paid greater attention to any transactions in the past twelve months and any escalations of price and reported them to [Bank].

- 7) **Matter 3061/3132:** [R] purchased this property on January 4, 2016 for \$55,000.00 and sold the property to [H] the same day for \$127,000.00 with a closing date of February 5, 2016, later amended to January 29, 2016. The property title was registered in his name on January 23, 2016 for \$55,000.00. Title was registered to [H] on February 10, 2016 for \$127,000.00. A [Bank] mortgage for \$125, 485.00 was registered on February 10, 2016.
  - a) [C] represented both [R] and [H] for the transaction that closed on January 29, 2016.
  - b) I represented [R] in his purchase and sale of this property. I did not represent [H] in her purchase of this property, she had her own counsel. I am not aware of the particulars of her mortgage to the



[Bank]. I opened my file for the sale on January 27, 2016. I was not aware that [R] had resold the property to [H] on the same day.

- c) I was asked by investigators if I noticed a sudden increase in value of \$72,500.00 for the property which was purchased by [R] and resold to [H] on the same day. I replied that I did not notice the increase and stated "in my mind I didn't think of them as fraudsters. I was thinking this is a realtor who was able to find good deals and re-sell them" and if I had any inclination there was fraud involved I would have been more careful. I believed the bank would not have issued a mortgage and mortgage instructions to [H's] lawyer if the property is not worth as much as they are financing it for and I viewed the transaction as straight forward. I stated I had no indication [H] was a straw purchaser.

- 8) **Matter 2778/3165:** I represented the initial purchaser, [B] when he bought the property for \$46,000.00 with a closing date of May 29, 2015; the property was transferred to him on June 24, 2015.

- a) [B] sold the property to [H] for \$112,500.00 with a closing date of March 15, 2016 and it was transferred to her on April 5, 2016. I represented [H] on this transaction while [B] retained another lawyer. I also represented the [Bank] for the mortgage provided to [H]. The mortgage of \$110,722.00 was registered on title on April 5, 2016.
- b) I met [H] through [C].
- c) The [Bank] Instructions to Lawyers reads:
  - UNUSUAL ACTIVITY:*
  - i. Notify the Bank if there are any unusual circumstances to suggest that the amount paid by the purchaser for the property exceeds substantially the fair market value of the property;*
  - ii. Notify the Bank of any recent transfers of the same property. In particular, of any transfers of the same property that occurred within the preceding 12 months and specify to the Bank the amount of consideration recorded at the Land Titles Registry for such transfers;*
  - iv. Report to the Bank any suspicious circumstances or reasons to suspect the validity or propriety of the transaction.*
- d) I was aware that [B] had expressed joy that the property was a good deal for him as it was a large lot. I did not consider it unusual for him to have resold it for a much higher value later on based on his representations.
- e) I did not report to the [Bank] the transfer of title or the \$65,500.00 increase in value within 9.5 months as per the instructions. In hindsight and with the benefit of Practice Review I understand that price increases and recent transfers alone can be flags of fraud. I should have paid greater attention to any transactions in the past

twelve months and any escalations of price and reported them to [Bank].

12. During her examination-in-chief and cross-examination, Ms. Amanoh did not dispute the contents of Exhibit 5 or the validity of her comments made to BW.

#### **Argument on Citations 4 and 5**

13. LSA counsel argued that the conduct in these two citations had largely been admitted to by Ms. Amanoh in her testimony, and in particular when she did not dispute that the contents of Exhibit 5 were true. The LSA argued that this demonstrated a failure to serve her bank clients. Further, with respect to Citation 5, the LSA submitted that it had been demonstrated on a balance of probabilities that she unknowingly assisted others in carrying out fraudulent mortgage activities. The significant increases in price over a relatively short period of time, and the high mortgages placed in the end are indicia of fraud, and the investigator testified that fraud likely occurred. LSA counsel further noted that the Citation uses the phrase “fraudulent activities” not “fraud,” and that it does not require proof of fraud. Citation 5 does not require deliberate intent on Ms. Amanoh’s part, and the LSA acknowledged that there was no evidence of deliberate intent in this case.
14. The LSA argued that this conduct is deserving of sanction. It was noted that Ms. Amanoh either did not comply with her general instructions, pay more attention to the specific instructions, get the price, values and timing right, or she did not understand her duty to the client. She deferred responsibility to the bank at times by indicating the bank should have conducted, and she assumed the bank had conducted, its own due diligence, or attributed the increase in price to renovations. The LSA argued that she should not have just been dealing with the mechanics, that lawyers are not just undertaking conveyancing.
15. Ms. Amanoh’s counsel acknowledged that Ms. Amanoh did not dispute that the conduct occurred. Ms. Amanoh admitted all of the facts in Exhibit 5, that she did not follow her bank clients’ instructions; did not report significant changes in value or sales within twelve months of the transaction; that her misinterpretations and failure to pay close attention to the banks’ general instructions led to her failing to notify her lender clients of escalations in price and transfers within twelve months; she was too trusting of other individuals; that the items she failed to notice and failed to report to her bank clients are indicia of possible mortgage fraud; and she did not carry out her job as a prudent and careful solicitor in providing legal services. However, she argued that no “further” sanction is warranted, given the steps that Ms. Amanoh has already taken, the practice review she has undergone, and the restrictions on her practice.
16. Ms. Amanoh’s counsel also argued that, while there are several indicia of potential mortgage fraud identified, the “fraud” component of Citation 5 is not made out on the record. Not any and every instance of indicia of potential fraud necessarily reflects actual fraudulent activity or an improper purpose. She argued that there was no evidence of an

improper purpose or harm to the public. She further argued that while Ms. Amanoh did not meet the standard owed by her, “there is no evidence that she unwillingly assisted others in carrying out improper purposes.”

17. Counsel further suggested that Citation 4 was broad enough to subsume the conduct in Citation 5, and that the Citations should be combined.

#### **Analysis and Decision on Citations 4 and 5**

18. Based on the unchallenged evidence of BW and Ms. Amanoh’s adoption of the comments she made to BW in the course of his investigation, the Committee finds that the conduct set out in the Citation 4 has been established on a balance of probabilities. During her submissions, counsel for Ms. Amanoh admitted that this conduct occurred.
19. Further, the Committee finds that this conduct is deserving of sanction. Ms. Amanoh did not act in a thorough, conscientious, and diligent manner in providing legal services to her clients. It is not enough that Ms. Amanoh was not thinking of a fraudulent transaction. Her conduct demonstrates a failure to serve her bank clients. She did not carry out her job as a prudent and careful solicitor.
20. With respect to the conduct set out in Citation 5, the significant increases in price over a short period of time and the high mortgage values placed on the properties are indicia of fraud, and the investigator testified that fraud likely occurred. The Citation uses the term “fraudulent activities” and does not require proof of fraud.
21. Further, the Committee finds that this conduct is deserving of sanction because Ms. Amanoh disregarded clear instructions from her bank clients regarding the increase in price of a property over a short period of time. Ms. Amanoh has admitted this conduct and has not acted as a prudent and careful solicitor. Her failure to do so resulted in her unknowingly assisting others in their fraudulent activities.
22. The Committee finds that the Citations 4 and 5 are distinct enough to be considered separately. There is a significant difference between failing to act thoroughly, conscientiously, and diligently in providing legal services to clients and unknowingly assisting others in carrying out fraudulent activities, and the Committee finds that these Citations are correctly dealt with separately.
23. Ms. Amanoh’s actions and the measures taken after the investigation commenced do not factor into the Committee’s determination about whether the alleged conduct set out in the Citations occurred and is deserving of sanction. Those considerations are more relevant to the sanctioning phase of this hearing.

#### **Relevant Evidence on Citations 1, 2 and 3**

24. Citations 1, 2 and 3 are set out above in paragraph 2. Relevant portions of the oral evidence are summarized below and organized in chronological order, rather than by witness. Discrepancies in the evidence have been noted.
25. These Citations were the result of a complaint filed with the LSA by FH on October 26, 2017.
26. FH testified at the hearing. She did not make a private hearing application and her evidence was heard in public.
27. At the end of 2016 and into 2017, FH was facing several personal difficulties. As a result of these difficulties, FH was seeking to sell her matrimonial home and another revenue property owned by her and her estranged husband. Under the terms of a separation agreement signed by FH and her husband, these properties were to be transferred to FH.
28. In December 2016, FH and IS met, having been introduced by a banker friend of FH's. IS indicated that he could help FH sell her property. FH testified that she did not hear from IS for a while, until sometime in January when they communicated through an online app, as IS was out of town. At that time, IS indicated he had a buyer lined up. On IS's return to the country, he asked FH to sign a listing agreement. FH testified that the agreement was blank when she signed it, and that it did not have a price on it. While her husband's signature was on it, he did not sign it when she was with him, and FH said that he does not recollect having ever signed this document. She also testified that she never met the realtor, KK.
29. FH further testified that she did not see the listed price for the matrimonial home until she saw the listing itself. She had asked IS why it was listed for \$559,000.00 when he had previously told her that her house would not sell for \$510,000.00. She testified that he told her that he had a client ready, that this price was just for display, and a higher price would help the buyer get his mortgage easier.
30. FH also testified that she signed the Residential Purchase Contract (RPC), but that it was also blank when she signed it. It did not have a price or the address on it, nor was it dated. Her estranged husband's signature was not on it. The RPC is dated January 29, 2017, but FH testified that she did not sign it that day because she was at home with her boyfriend. She also did not sign it before KK.
31. FH was introduced to Ms. Amanoh by IS. IS and his wife, through her numbered company, were clients of Ms. Amanoh's firm. According to FH, IS had indicated that Ms. Amanoh could assist with the transfers. Under cross-examination, FH indicated that IS told FH not to talk to anyone, and that he would talk to everybody to avoid misunderstandings.

32. Ms. Amanoh does not recall discussing with FH that IS and his wife's numbered company were clients or asking FH's permission to have discussions with IS present.
33. After the initial introduction by IS in late January 2017, on February 1, 2017, FH and her estranged husband attended Ms. Amanoh's office for the purpose of having the estranged husband sign a dower release and transfers related to the matrimonial home.
34. At this meeting, FH testified that IS and several other people were in the meeting room, and she did not know who some of them were. She said she was provided some papers to sign but did not ask any questions. Her husband separately went into an office with Ms. Amanoh and signed the transfer and dower release. Then he left and FH signed the documents. FH said that there was lots of joking and laughing at the time, and that it was not explained to her what the documents were, and she did not review the papers before signing them. The price of the matrimonial home on the Affidavit of Transferee was indicated as \$482,000.00, though FH said she does not remember if that price was there at the time.
35. Ms. Amanoh acknowledged that she provided advice to the estranged husband on the dower release and transfers, and that he did not get independent legal advice. She testified that the parties asked her to do so and FH had said that she was in a tight financial situation and her estranged husband would never go to a lawyer to seek independent legal advice. Ms. Amanoh said that she was trying to help.
36. Ms. Amanoh acknowledged that acting for FH and her estranged husband in relation to the dower release is contrary to the *Dower Act*, and a clear conflict.
37. Under cross-examination, Ms. Amanoh agreed that having the separation agreement spelling out the agreement between FH and her estranged husband was important and gave her comfort in giving advice to the estranged husband, despite it being a violation of the *Dower Act* and despite FH paying for that service.
38. After Ms. Amanoh met with FH's estranged husband, Ms. Amanoh testified that her student-at-law, who spoke the same language as FH and her estranged husband, met with them to sign the transfers of land. Ms. Amanoh indicated that at that time, she and IS left the room.
39. Ms. Amanoh understood that FH would pay the legal fees for the dower release and transfers from the sale proceeds of her matrimonial home, as FH had indicated that she did not have the funds to pay Ms. Amanoh at the time of the signing of the dower releases and transfers.
40. After the estranged husband left, Ms. Amanoh testified that FH told her the property was in foreclosure and the house was listed but that it had not been sold yet. There was no discussion about potential purchasers at all.

41. Under cross-examination, Ms. Amanoh confirmed that FH did not bring the signed January 29, 2017 RPC to her attention. At the time, she was also not aware of any other agreement related to the sale of the matrimonial home, although during the LSA investigation, she indicated that IS said he had documents. She refused to take any documents after the complaint and ALIA claims were filed, but she did tell the LSA investigator.
42. Ms. Amanoh left the country on February 16, 2017 to attend to a personal matter. She did not receive a real estate purchase contract before she left, nor had she opened a real estate file for the sale. She returned on approximately March 8, 2017, attending her office briefly on March 9, 2017.
43. During her absence, Ms. Amanoh's legal assistant, VN, was responsible for the office. At the time of her absence, Ms. Amanoh also had two articling students. There were other members of the LSA sharing office space or nearby. In addition, Ms. Amanoh made arrangements for two lawyers to oversee her practice. With respect to her real estate practice, TC, a member of the LSA, attended her office from time to time to sign cheques and provide advice on various matters, including giving legal advice to the students. Ms. Amanoh also left a local number and her Canadian cell number with her staff, indicating that her staff knew to call her or one of the two lawyers overseeing her practice.
44. Ms. Amanoh said that she was in constant contact with the office, and would phone her office every morning. She also checked in with TC to see if everything was okay.
45. Ms. Amanoh testified that the first she heard of the sale was when IS called her and asked her to provide a discount to FH on her fees. She was upset as she was away dealing with an emotional personal situation and someone was calling her for a discount.
46. TC advised that, as a general practice, Ms. Amanoh would tell him about the files that would be coming up that he would be dealing with, and what to expect. However, he did not recall the specific conversation in this case. He would make himself available to answer questions from her staff and students and to sign cheques.
47. During Ms. Amanoh's absence, VN knew that she could rely on the assistance of TC and she did so, to a limited extent. However, TC was never contacted with respect to the FH sale, other than to provide a precedent to VN as requested and to sign some cheques. TC was prepared to attend Ms. Amanoh's office as required.
48. FH proceeded with the sale of the matrimonial property. Under the RPC, FH was contracted to sell her matrimonial home to BN and AN. The sale price was \$529,900.00 (Exhibit 50). The sale was brought to the attention of Ms. Amanoh's legal assistant, VN, on February 27, 2017, with a closing date of February 28, 2017.

49. VN testified that she has been a legal assistant for Ms. Amanoh since 2011, commencing full time hours in 2013. She was familiar with IS, he had made numerous referrals to the firm, and his spouse was the principal of a numbered company for whom Ms. Amanoh acted.
50. VN acknowledged that it was very unusual for her to work on a real estate file on her own. However, VN understood that there was some urgency to the matter closing on time due to there being a foreclosure. Although Ms. Amanoh was not in the country when the file came in, Ms. Amanoh's firm acted on the sale. VN did a title and tax search for the property, prepared an Irrevocable Order and Direction to Pay, the Statement of Adjustments, the Transfer of Land, an Affidavit of Execution and a Statutory Declaration. The Transfer of Land did not have the buyers' names on it as that was filled in by the buyers' lawyer.
51. As set out below, VN ultimately arranged for documents to be signed, arranged for cheques to be signed and issued and disbursed funds.
52. On February 28, 2017, FH attended at Ms. Amanoh's office to sign documents.
53. FH testified that when she arrived at the office, VN indicated that she had not received instructions yet, and only had some of the papers ready. FH testified that she signed an incomplete document, the Irrevocable Order and Direction to Pay (Exhibit 54), but at the time, it did not have all of the points listed on it, it only had three points. FH indicated that only she and VN were present at the time, and that IS was not there when she signed. At the time, FH did not have a discussion with anyone about the sale price being \$529,000.00. FH testified that this was the only document signed at this meeting.
54. According to VN, during Ms. Amanoh's absence, on February 28, 2017, FH and IS attended at Ms. Amanoh's firm to meet with VN and to sign documents to effect the sale. She did know that the numbered company was a client of the firm and that it was IS's wife's company. VN did not discuss this with FH, as she assumed that FH knew because FH came in with IS.
55. During the meeting, IS and FH were talking and scribbling notes, and VN got the numbers for her documents from that discussion. Among the documents signed was the Irrevocable Order and Direction to Pay (Exhibit 54) which provided that any sale proceeds from the sale of her matrimonial home in excess of \$455,000.00 were to be paid to IS's wife's numbered company (a client of Ms. Amanoh's firm).
56. VN testified that she went through each of the points with FH, and that point number three was unusual and was added after the discussion she had with FH and IS. Ms. Amanoh, in cross-examination, confirmed that this was an unusual direction. VN testified that she did not alter the Irrevocable Order and Direction to Pay to add additional points after FH left.

57. Under cross-examination, Ms. Amanoh also indicated that the order of the six points in the Irrevocable Order and Direction to Pay were not in any priority, and the interpretation of the document would depend on the reader's mindset. She indicated that if there is a sale, her priority would be to pay off a mortgage. Ms. Amanoh indicated that the instructions on how the excess over \$455,000.00 would be calculated would come from the client, FH. She said that there was no specific reconciliation for this amount, the firm paid out what was supposed to be paid out, and that is in the client ledger.
58. Ms. Amanoh disputed FH's claim that any real estate sale documents had been changed or that Ms. Amanoh was trying to distract FH when FH was signing documents for the dower release and transfers. She testified that her life, family and career were more important to her.
59. VN indicated that the Transfer of Land and Dower Act Affidavit were also signed by FH at the February 28, 2017 meeting. VN further testified that while a Statutory Declaration was signed regarding the real property report, it was not used, as during the meeting it was discovered that the real property report was no longer accurate. A new real property report was ordered.
60. FH testified that she had a conversation about the accuracy of the real property report with Ms. Amanoh, and that Ms. Amanoh told her not to lie. Ms. Amanoh says this discussion did not occur, as she was not there at the time of the property sale, and the issue of the real property report would not have arisen at the earlier meeting with respect to the dower releases and the transfers of land.
61. VN confirmed there was no lawyer or student-at-law present when FH signed the documents.
62. The Statement of Adjustments shows a deposit of \$5000.00. VN initially said she took the word of the seller that there was this deposit, but then said she took this information from the RPC.
63. VN testified that the student-at-law at the firm signed the Affidavit of Execution after FH left. The student also signed the trust letter before it and the documents were sent over to the buyers' lawyer.
64. Although there is a discrepancy in the evidence about whether IS was or was not at the February 28, 2017 meeting, and which documents were signed, the evidence is clear that FH did not receive legal advice with respect to the Irrevocable Order and Direction to Pay and its implications.
65. In addition to the Irrevocable Order and Direction to Pay, another undated note from the numbered company was entered into evidence (Exhibit 63), which provided additional directions. First, it confirmed that the numbered company would receive payment of



\$17,501.50 directly from the purchasers, BN and AN. Second, it authorized Ms. Amanoh's firm to deduct this amount from the share of the sale proceeds of FH's matrimonial home that were due to the numbered company. Third, this note provided that FH was to "receive her full \$455,000.00 from the cash to close less \$17,501.50 from [T] Law Office to Amanoh Law Firm." It is unclear on the evidence when this document was provided to Ms. Amanoh's firm and by whom. It is not signed by FH. VN testified that she does not recall discussing this document with FH. It is also unclear whether this money was ever paid directly by the purchasers to the numbered company. Neither VN nor Ms. Amanoh were able to explain what the last provision meant.

66. FH testified that after she left the meeting, FH received a call from IS, who told her that she also needed to provide the security deposit from her renters to the purchasers, and that she could email permission for this money to be paid. She then called VN, who confirmed that an email should be sent.
67. VN indicated that at the time, she did not know that the property was rented. That was discovered later, in early March, when the issue of the security deposit was raised. Normally, this adjustment would have been included on the Statement of Adjustments. After receiving FH's email instructions, the security deposit was paid by cheque to the buyers from FH's funds in trust.
68. IS gave instructions to VN to pay funds to FH on the sale, and IS orally instructed VN to pay FH \$10,000.00 on March 2, 2017. TC signed the cheque in favour of FH on or about March 2, 2017. FH picked the cheque up from Ms. Amanoh's office after being advised by IS that it was there.
69. In addition, and in accordance with the Irrevocable Order and Direction to Pay, VN transferred \$56,910.00 to IS's wife's company, by way of an internal transfer at Ms. Amanoh's firm on March 2, 2017 (Exhibit 70).
70. VN confirmed that the approximately \$17,000.00 was not an internal transfer, but would have been paid directly to IS by the buyers.
71. Other than seeking a precedent from TC and having him attend Ms. Amanoh's office to sign cheques, VN did not seek any advice from TC regarding the Irrevocable Order and Direction to Pay, the oral instructions she was getting from IS, the written authorization from the numbered company, or on any other aspects of the sale of FH's property.
72. VN testified that she was trying to do her best and that nothing raised a red flag with her. At the time, she had no concerns about the documents or the exchanges she had with the individuals involved. VN stated that in FH's community, it was not unusual for a number of people to come in at the same time on one transaction.

73. Ms. Amanoh testified that on her return, she expressed her unhappiness to VN as to how the FH sale file was handled. Ms. Amanoh testified that she was reviewing the files on her return and saw that the deal had closed and the bill had not been done, so she prepared the bill, giving FH the discount requested by IS. She observed that the cash to close on the Statement of Adjustments was not what was in trust and asked VN to explain. She advised VN that VN should have insisted on the full cash to close, and then they could do the alteration afterwards. Ms. Amanoh stated that she asked TC if he had seen this, and he responded that he saw the documents on file and the direction and thought it was okay because the seller had indicated a direction and the \$17,000.00 was supposed to go to this person anyway.
74. After Ms. Amanoh's return, when seeking to have the mortgages discharged from title, it was discovered that an additional \$800.00 was required to cover a bridge mortgage payment that had not gone through. Ms. Amanoh testified that she called FH to ask her for more funds, and FH said she would bring it in the following week.
75. FH testified that she brought the money to Ms. Amanoh's office and gave it to her. FH admitted on cross-examination that she and Ms. Amanoh had a discussion about her personal circumstances, but disputed having any discussion about her account or the trust statement with Ms. Amanoh at that time.
76. Ms. Amanoh testified that she and FH met for approximately half an hour on the day FH dropped off the \$800.00 - March 16, 2017. She further testified that she went through her invoices and the trust statement with FH in order to explain to FH why there was no money left in the account, and why the cash was required. Ms. Amanoh testified that FH did not tell her that she was unhappy with the transaction, even when Ms. Amanoh explained that that \$56,000.00 was transferred in accordance with the Irrevocable Order and Direction to Pay. FH did not ask her any questions as she was going through the documents. Ms. Amanoh further indicated that they discussed FH's personal situation. Handwritten notes of this meeting were entered into evidence (Exhibit 82). The notes indicate that Ms. Amanoh would report to FH and return any balance of trust funds after all her prior encumbrances had been discharged. These notes do not indicate that they discussed the invoice or trust statement.
77. FH testified that she contacted Ms. Amanoh by email on March 28, 2017, seeking her closing papers as she was trying to sell her other property. FH's new lawyer asked her for proof that a payment had been made on the bridge mortgage. FH indicated that she asked Ms. Amanoh to mail the information to her, but Ms. Amanoh never did. Instead, FH said she went to the office to pick up the materials. The materials contained in the envelope were dated March 28, 2017. Ms. Amanoh testified that the interim reporting on the closing was emailed to FH on March 28, 2017.
78. These materials were prepared by VN. Under cross-examination, Ms. Amanoh acknowledged that the reporting letter with the ledger attached contained some errors, for

example, a wrong file number and an entry for the numbered company that should have been for the payment of legal fees on the dower release and the transfers of land. Ms. Amanoh does not recall whether she reviewed these documents before they were sent out.

79. When FH opened the envelope, she saw that the sale price was \$529,000.00. She believed that she was given the wrong documents and went to Ms. Amanoh's office to tell her that. FH said that she told Ms. Amanoh that her house sold for \$455,000.00, and indicated that Ms. Amanoh said that it was FH's house and she should know, and that these were her papers. FH said Ms. Amanoh told her if FH had any questions, to check with IS.
80. When FH called IS, IS told her to talk to her lawyer or the realtor. FH called the realtor, who expressed surprise that the property had sold. FH then went to the buyers' house. BN told her that he bought the house for \$511,000.00.
81. On April 3, 2017, FH emailed Ms. Amanoh's office asking for her purchase offers and purchase documents. VN responded by asking whether FH meant the purchase/sale contract, and if so, FH should have a copy, and asked what other documents FH was looking for. According to VN, FH did not respond.
82. FH testified that she then went through her papers, including the Statement of Adjustments, and tried to calculate the adjustments that were made. She noted that approximately \$56,000.00 was paid to IS's wife's company. On June 5, 2017, FH emailed Ms. Amanoh asking about some missing money, approximately \$18,000.00. FH also indicated that IS told her that she had sold him her matrimonial home for \$455,000.00. FH asked Ms. Amanoh for a copy of that contract or to confirm that Ms. Amanoh did not have any such contract. Ms. Amanoh responded on the same day, indicating that Ms. Amanoh was not privy to any agreement FH may have had with IS, and that FH should contact IS directly with any questions (Exhibit 58).
83. Ms. Amanoh testified that she did not receive a follow-up email from FH and assumed that FH had received her answers. She said that with the benefit of hindsight, she should have followed up with FH. Under cross-examination, Ms. Amanoh testified that she did not know why she did not send the undated note from the numbered company (Exhibit 63) to FH to explain the missing funds.
84. Ms. Amanoh further testified that FH and IS were comfortable together. In hindsight, she says she should have left specific instructions with VN not to meet with any real estate clients without TC, but VN did not meet with clients, so Ms. Amanoh did not think that such a direction was necessary. She does not know why VN did not involve one of the students-at-law in this file.

85. Even after her return, Ms. Amanoh stated that she did not think there was a conflict situation on this transaction because FH and IS were coming together and giving joint instructions. FH was working on this transaction with IS and they had arrived at an agreement to apportion the money a certain way. The firm was just effecting the direction in terms of apportioning the money.
86. Under cross-examination, Ms. Amanoh agreed that, had she been there at the time of the transaction, she would have talked to FH and made sure she understood how the money was being split. She agreed that when she would meet with clients, she would provide them with legal advice. When asked whether she failed to make provisions for anyone to explain the import of the documents, she explained that, at the time, she did not expect that this file would be coming in, that there would be this sort of specific direction or that VN would meet with the client by herself. While VN does not take instructions as a legal assistant, she also confirmed that in this case VN took instructions for IS regarding the payment of \$10,000.00 to FH.
87. Ms. Amanoh further confirmed that she did not know how much the buyers actually paid for the property as it was not known whether the approximately \$17,000.00 was paid to the numbered company or IS. She confirmed that the new mortgage for the property was higher than the cash to close, but indicated that if it was a CMHC mortgage, the insurance is added to the principal, which could make the amount higher. She was unable to confirm if this amount was higher than it should be, even taking into account the insurance.
88. In response to a question from the Hearing Chair, Ms. Amanoh confirmed that she did not make any inquiries about how IS and FH came up with the arrangement and the directions to pay, and she did not see any agreement explaining why IS should get the amount of money he would. While in hindsight she agrees the arrangement was strange, at the time she believed that FH knew what she was doing. Ms. Amanoh's radar did not go up at the initial meeting with IS and FH, she thought IS was just trying to help FH with the transfers.

### **Argument on Citations 1, 2 and 3**

89. In relation to Citation 1, the LSA argued that Ms. Amanoh clearly failed to serve her client, FH. The duty of loyalty Ms. Amanoh owed to her client, FH, was impaired by either her own interest in continuing to get referrals and in recouping the fees incurred of the dower release file from the proceeds of the sale of FH house, or by the interests of IS and the numbered company in obtaining proceeds of the sale of FH's house.
90. The LSA further submitted that Ms. Amanoh failed to serve her client when she provided legal advice to FH's estranged husband, in contravention of the *Dower Act*.
91. In addition, she also failed FH on the sale file. The Irrevocable Order and Direction to Pay creates a tension between FH and the numbered company, in that it provides for a third party, the numbered company, to receive proceeds of the sale in excess of a certain

amount. The more FH had to pay in closing costs, the less the numbered company would receive. The LSA argued that the sale file should not have been taken.

92. LSA counsel also argued that IS took active steps to direct and give instructions on the sale file, none of which were confirmed by FH. VN accepted and acted on those instructions, despite the Code prohibiting her from doing so and despite IS not being the client.
93. LSA counsel noted that, while there is some discrepancy in the evidence about the completeness of the Irrevocable Order and Direction to Pay FH signed, the critical point is that no lawyer provided advice to FH on this or any other document. In the short meeting that occurred on February 28, it is clear from the evidence that no lawyer sat down with FH to explain the implications of the documents she was signing or the disparity in how the proceeds were to be disbursed.
94. In addition, it is clear from the evidence that after the sale concluded, FH was confused and did not understand what had transpired and why. There was a further duty, after the fact, to explain to FH how the deal transpired and to respond to FH's questions. It is also clear that the reporting letter contained errors and that Ms. Amanoh did not review the letter before it was sent.
95. LSA counsel argued that the evidence is not consistent with FH knowing and understanding the deal. FH believed she was sent the wrong documents, she asked for her real estate purchase contracts and she asked about the discrepancy in the cash to close.
96. The LSA also argued that the evidence does not support Ms. Amanoh explaining the financial situation or walking FH through the trust ledger at their March 16 meeting. Ms. Amanoh's notes of that meeting make no reference to having done so, and FH says that that discussion did not occur. Further, the LSA suggested that FH would not have had the ability or time to look through the reporting memo. The LSA argued that the discussion did not happen in the detail that Ms. Amanoh suggests.
97. The LSA also submitted that it is unlikely that FH would have agreed to this deal. There is no evidence of an agreement on the record. IS or the numbered company got approximately \$57,000.00 from the sale proceeds, plus, possibly \$17,000.00 directly from the purchasers. FH received slightly less than \$10,000.00. LSA counsel argued that this division made no sense as IS did not do anything to deserve this money. Regardless, FH was owed advice about the disparity of the proceeds distribution and did not get it.
98. The LSA submitted that lawyers need to protect clients, and not wait for the clients to raise questions. It was wrong for Ms. Amanoh to say to FH that Ms. Amanoh was not privy to the deal and to not give any explanation that she could at the time in relation to the funds that were paid out.

99. In terms of Citation 2, it was a clear conflict to provide legal advice to FH's estranged husband on the dower release file. There was a statutory prohibition from doing so.
100. In addition, the LSA submitted that Ms. Amanoh (and her staff) acted in conflict as the duty of loyalty was divided between FH and IS and the numbered company on the sale file. The systems that should have been in place to prevent the conflict from arising and the sale file from being taken, even when she was away, were not in place.
101. Further, not only was IS getting more out of the deal than FH, he had active involvement in the deal. After her return, Ms. Amanoh's conduct was not adequate.
102. Regarding Citation 3, the LSA noted that Ms. Amanoh is not in the country when the sale transaction occurred. However, VN was allowed to intake the sale file, prepare documents, close the file and disperse funds, all in Ms. Amanoh's absence. While VN had the ability to ask a lawyer questions, she was not in a position to identify conflicts or give legal advice. She took instructions from a client without having those vetted by a lawyer, and she also took instructions from a non-client. VN was not told that she could not take files and complete them on her own, and she was not told who could give instructions, take instructions, or provide legal advice.
103. The LSA argued that even after Ms. Amanoh's return, VN prepared the reporting letter, which contained errors and was not reviewed by Ms. Amanoh. In addition, VN did not follow up with FH about the additional documents requested.
104. Ms. Amanoh's counsel argued that the LSA has the burden of proof to establish that Ms. Amanoh engaged in the alleged conduct set out in the Citations on a balance of probabilities. This must be based on clear, convincing and cogent evidence, and not supposition or speculation. It must prove a breach of the Code of Conduct and that the breach is deserving of sanction, as not all breaches of the Code amount to conduct deserving of sanction.
105. Ms. Cooper indicated that Ms. Amanoh admitted a number of facts and admitted wrongdoing, and acknowledged that she is guilty of some things. She took responsibility for the manner in which her files were conducted. She met with FH's estranged husband and executed the dower release while she was counsel to FH and FH paid for those services, contrary to the *Dower Act*. FH should have had the opportunity to see a lawyer for her closing and did not. Ms. Amanoh also admits she is responsible for her practice.
106. However, Ms. Amanoh's counsel argues that these are not admissions of all of the Citations and Ms. Amanoh does not admit that they amount to conduct deserving of further sanction. Ms. Cooper notes that Ms. Amanoh had undergone practice review, implemented improvements and voluntarily withdrawn from real estate practice. These actions have already achieved the purposes of Part 3 of the *Legal Profession Act*. To the

extent that a sanction is required in this instance, counsel submitted that a reprimand and a formalization of the voluntary undertaking would be sufficient.

107. Counsel further argued that there is significant overlap between Citations 1, 2, and 3, and in particular, Citations 1 and 3.
108. She noted that Ms. Amanoh provided legal advice to FH's estranged husband as FH and the husband both asked her to do so, and she was trying to help. The transfers were conducted to effect a written separation agreement, for which they each had independent legal advice. Further, FH's estranged husband was uncooperative and kept backtracking on the agreements with respect to their home, and FH was in foreclosure and could not otherwise deal with the property without his consent. Ms. Amanoh's assistance was in the best interests of FH based on what FH told her and what she knew at the time.
109. With respect to IS's involvement, counsel argued that Ms. Amanoh's general practice would be to check with the client before discussing issues before a third party. She argued that there is no reason to think that Ms. Amanoh did not do that in this case as well. Ms. Amanoh acknowledged that she did not specifically explain to FH that she had a solicitor/client relationship with IS, his wife or the numbered company. However, FH was referred to her by IS, and FH said she knew IS used Ms. Amanoh as his lawyer.
110. Ms. Amanoh indicated that there was no sale agreement and she was not aware that the property was sold when she left the country. She denied that she acted in a conflict of interest with a view to profit or further referral work. She would not risk her life, family or career for such things. Ms. Amanoh also denied that she or her office tampered with documents or distracted FH when she was signing documents.
111. Counsel argued that FH's testimony was inconsistent and contrary to that of other witnesses and the documentary record. For example, FH said she signed only one document with VN, and that it was incomplete. However, there were several documents signed by FH that day, and VN denied that any document was incomplete. FH said she discussed the real property report with Ms. Amanoh and Ms. Amanoh told her not to lie. Ms. Amanoh denies having this conversation. VN said the discussion about the real property report occurred with her, and that a Statutory Declaration was prepared and signed but not used, as it was determined that the real property report was no longer accurate. Accordingly, Counsel submitted that FH's evidence is unreliable with respect to who she met with and what she signed. Further, FH's allegation of tampering with the Irrevocable Order and Direction to Pay is not clear, convincing or cogent.
112. In contrast, counsel argued that Ms. Amanoh's evidence was consistent and she freely made concessions against her own interests. Ms. Amanoh said she reviewed the trust statement with FH on March 16, 2017 when FH came in to leave the mortgage payment shortfall of \$800.00. Ms. Amanoh said FH did not ask any questions at that time. Ms. Amanoh said the full file was there during the meeting. She said they also discussed FH's

personal situation. FH's evidence changed on this point. She initially said she just dropped off money, then later admitted they had a conversation.

113. Ms. Amanoh further admitted that there were things she could and should have done to further FH's interest, including providing a copy of the real estate purchase contract, the undated direction to pay by the numbered company, and the records showing the internal transfer to the numbered company. She also could have followed up with FH after she directed FH to talk to IS.
114. With respect to Citation 3, counsel for Ms. Amanoh argued that Ms. Amanoh put into place reasonable and appropriate arrangements for her absence. She arranged for two lawyers to oversee her practice. As a general practice, she would provide specific instructions to those lawyers. TC indicated that the staff had his personal cell number and he would make himself available as necessary, and that he did assist one of Ms. Amanoh's students during this period with a complicated matter.
115. In hindsight, Ms. Amanoh agreed that she could have left more specific instructions that no real estate files be done in her absence or what specifically must be done by a lawyer. However, she did not do that as, based on her past experience, she did not reasonably understand that it would be necessary. Both Ms. Amanoh and VN indicated that it was highly unusual for VN to prepare all real estate documents for closing and to meet with clients without a lawyer. VN indicated that her focus was on serving FH's urgent need.
116. Section 6.1 of the Code indicates that "A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions." VN took it upon herself to undertake this work on the real estate file, but this was not work that was delegated to VN nor was it done under any instruction from Ms. Amanoh.
117. Section 6.1-3(b) indicates that "A lawyer must not permit a non-lawyer to give legal advice." Ms. Amanoh admitted that VN met with FH, however, Ms. Amanoh did not permit VN to do what she did and was unhappy with what had transpired while she was away. She was not aware of the sale transaction until after it had occurred, as VN did not speak to Ms. Amanoh about it.
118. Ms. Amanoh admitted that she was responsible for her practice, and that in her absence VN met with FH when a lawyer should have met with FH, and FH did not have the benefit of a lawyer at the time of the closing. Counsel argued that these facts and admissions can be subsumed under Citation 1. Ms. Amanoh admitted that her conduct fell short of what is required under the Code in this respect.
119. In relation to Citation 2 and the conflict of interest that allegedly arose when Ms. Amanoh was away, counsel argued that Ms. Amanoh did not authorize the opening of this file nor this conflict. She was not aware of the possibility of the conflict when she left. Counsel



further submitted that there is no clear conflict here that fits squarely under the rules. With respect to the impairment of the duty of loyalty, counsel submitted that Ms. Amanoh's firm was effecting a direction to pay that Ms. Amanoh understood, after the fact, to be the direction of FH. Counsel argued that this does not give rise to the impairment of loyalty suggested by the conflict of interest provisions.

### **Analysis and Decision on Citations 1, 2 and 3**

120. The Committee finds that Citation 1 and 3 should be considered separately. These are distinct allegations and the Committee has ruled differently on them.
121. On all the evidence, the Committee is satisfied on a balance of probabilities that Ms. Amanoh failed to conscientiously and diligently represent the best interests of FH. This includes failing to have FH's estranged husband get independent legal advice regarding his surrender of dower rights in the matrimonial home. While Ms. Amanoh understood that her giving advice to the husband and wife was a violation of the *Dower Act*, she continued to act for them both and allowed FH to pay for that service.
122. In addition, no legal advice was provided to FH regarding the sale transaction or the Irrevocable Direction to Pay. While there is some discrepancy on the evidence on what happened during meetings and who was present at various meetings, the evidence is clear and Ms. Amanoh acknowledged that FH did not receive any legal advice on the sale transaction, despite there being students-at-law at the firm, as well as supervising counsel.
123. Further, Ms. Amanoh knew that FH was not a particularly sophisticated individual. FH was under a lot of stress, and not necessarily in the best emotional health. At a minimum, based on Ms. Amanoh's notes of her meeting with FH, FH's emotional health was clear by the time Ms. Amanoh met with FH in mid-March. Despite this, Ms. Amanoh did not review the reporting letter before it was sent to FH (even to remove the errors). She did not follow up with FH via email or in person to explain the transactions, provide FH with information about what happened, or offer to assist FH in uncovering what happened. Nor did Ms. Amanoh herself investigate what happened once she reviewed the file on her return and identified concerns or once FH raised concerns with her. This non-responsiveness and inaction support the allegation that Ms. Amanoh failed to conscientiously and diligently represent the best interests of her client, FH.
124. Accordingly, for Citation 1, the Committee finds that the conduct occurred and that the conduct is deserving of sanction.
125. Citation 2 alleges Ms. Amanoh acted in a conflict of interest in relation to her client, FH. The evidence clearly demonstrates that to have been the case.
126. Section 3.1-2 of the Commentary on lawyer competency provides, in part, at paragraph (14):

The lawyer should refrain from conduct that may interfere with or compromise his or her capacity or motivation to provide competent legal services to the client and be aware of any factor or circumstance that may have that effect. [emphasis added]

127. Ms. Amanoh was in a conflict over the signing of the dower release by FH's estranged husband when she provided advice to the husband when acting for FH. Ms. Amanoh's conduct was clearly contrary to Section 7 of the *Dower Act*, which requires the parties to the release to have independent legal advice. Further, FH was to pay for that legal service, not at the time of the service, but later, from proceeds of the sale transaction, in which IS and the numbered company were involved.
128. Ms. Amanoh and her firm acted for IS's wife's numbered company. The duty of loyalty Ms. Amanoh and her staff owed to FH was impaired by her duty to her other client, the numbered company owned by IS's wife, which obtained part of the proceeds of the sale of FH's home. The systems that should have been in place to identify this conflict and prevent the conflict from arising and the sale file from being taken, even when Ms. Amanoh was away, were not in place.
129. The reasons why such systems are important is demonstrated by what happened in this case. VN inappropriately took instructions from IS in relation to another client's file. IS attended at least some of the meetings that Ms. Amanoh or her firm had with FH, and appears to have been active in outlining the terms and other arrangements (including Exhibit 63) for the sale. The inter-office transfer of sale funds from FH's trust account to the numbered company's trust account allowed for a transfer of a significant portion of sale funds to someone that was neither the purchaser or the buyer, and that transfer was not visible to the supervising lawyer (as no cheque needed to be signed). When FH expressed confusion and sought clarification, Ms. Amanoh referred FH to IS rather than responding to FH's questions herself. The Committee has been persuaded by the evidence that Ms. Amanoh and her staff's loyalty is likely to have been divided between IS/the numbered company and FH.
130. In the Committee's view, it has been amply demonstrated that Ms. Amanoh and her firm were in a conflict of interest on more than one occasion. Further, the Committee finds that the conduct is deserving of sanction because there was substantial risk that the client's interests were prejudiced by Ms. Amanoh and her firm's conduct. Accordingly, Citation 2 has been proven.
131. Under Citation 3, it is alleged that Ms. Amanoh failed to appropriately supervise her staff. Ms. Amanoh left instructions to her staff during her absence from February 16, 2017 to March 9, 2017. She called to check in several times, and left contact numbers where she could be reached. She made provisions for TC and another lawyer to supervise her practice and sign cheques as necessary during her absence. TC acted diligently as requested.

132. VN did her best as Ms. Amanoh's assistant, but did not relay instructions to the supervising lawyer or to the students-at-law in the office. VN did not call Ms. Amanoh, despite having numbers to call. While VN was motivated to be helpful, she performed work that both she and Ms. Amanoh testified she had not done in the past, and which should have been done by a lawyer, including meeting with clients alone and receiving and acting on instructions from clients. She also took instructions from IS without confirming with the client, which a lawyer would have known was inappropriate.
133. However, the Committee finds that Ms. Amanoh did not delegate the legal work to VN nor was it done under any instruction from her. Ms. Amanoh's arrangements for her absence were reasonable in light of the work expected in the office and the usual practices. She undertook steps that a reasonable and prudent solicitor would take. She cannot be faulted for not advising her assistant not to, in effect, practice law, when VN had never done so in the past, and there was no expectation that she would do so, particularly when other lawyers and students-at-law were available. The Committee finds that Citation 3 is not proven.

### **Conclusion**

134. This Committee finds that the LSA has made out Citations 1, 2, 4 and 5 on a balance of probabilities. The LSA has not proven Citation 3, and it is dismissed.
135. The Committee will convene on a later date to hear submissions on sanction.
136. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Ms. Amanoh will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, this 30<sup>th</sup> day of April, 2020.

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Robert Philp, Q.C.

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Buddy Melnyk, Q.C.

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Michael Mannas