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

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF ANTON SUBERLAK
A MEMBER OF THE LAW SOCIETY OF ALBERTA

ORDER OF THE HEARING COMMITTEE

UPON THE ISSUANCE OF CITATIONS by the Law Society of Alberta (LSA) to Anton Suberlak pursuant to section 56 of the *Legal Profession Act* (the Act);

AND WHEREAS:

a) Anton Suberlak signed a Statement of Admitted Facts and Admission of Guilt (the Statement, attached to this Order) in relation to his conduct on September 24, 2020;

b) Anton Suberlak admits in the Statement that the conduct set out in the Statement is deserving of sanction;

c) On October 20, 2020, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the Act;

d) On November 6, 2020, the Chair of the Conduct Committee appointed a single Bencher as the Hearing Committee (Committee) for this matter, pursuant to subsection 60(3) of the Act;

e) Pursuant to subsection 60(4) of the Act, it is deemed to be a finding of this Committee that Anton Suberlak's conduct is deserving of sanction;

f) On December 11, 2020, the Committee convened a public hearing into the appropriate sanction related to the conduct of Anton Suberlak;

g) Counsel for the LSA and counsel for Anton Suberlak have provided a joint submission on sanction for the Committee's consideration, seeking a reprimand and a fine of $6,000.00;

h) The parties have also agreed that it is reasonable for Anton Suberlak to pay $2,500.00 in costs in relation to this matter;

i) The Committee has determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest;

j) The Committee has accepted the joint submission on sanction, and accepted the submission with respect to the payment of costs.

IT IS HEREBY ORDERED THAT:

1. The appropriate sanction with respect to Anton Suberlak's conduct is a reprimand, which was delivered orally by the Committee to Anton Suberlak and a fine of $6.000.00

2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.

3. Anton Suberlak must pay costs in the amount of $2,500.00.

4. The fine of $6,000.00 and costs of $2,500.00 are due and payable by January 1, 2021.

5. No Notice to the Profession or Notice to the Attorney General is to be made.

6. The exhibits and this order 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 Anton Suberlak will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, on December 11, 2020.

____

Deanna Steblyk, QC

Schedule 1

IN THE MATTER OF *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
ANTON SUBERLAK
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE NUMBER HE20200081

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on April 27, 2001.

2. My present status with the Law Society of Alberta is Active/Practicing.

3. I am currently employed by a mid-sized firm in Calgary. My practice consists of approximately 45% real estate conveyancing and 35% commercial law, as well as some corporate, civil litigation, and employment law.

4. In my more than 19 years of practice, I have never before been sanctioned by the Law Society.

CITATIONS

5. On April 7, 2020, a Conduct Committee Panel referred the following conduct to a hearing:

    1. It is alleged that Anton Suberlak acted in a conflict of interest in representing G.A. and W.W. as well as NW Inc. contrary to the Code of Conduct and that such conduct is deserving of sanction;

    2. It is alleged that Anton Suberlak acted against his former clients G.A. and W.W. contrary to the Code of Conduct and that such conduct is deserving of sanction;

    3. It is alleged that Anton Suberlak failed to provide courteous, thorough, and competent legal advice to his clients G.A. and W.W. and that such conduct is deserving of sanction;

    4. It is alleged that Anton Suberlak failed to follow his clients' instructions and that such conduct is deserving of sanction; and

    5. It is alleged that Anton Suberlak failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

6. On September 17, 2020, the PHC Chair [WP] QC approved withdrawal of citations 3 and 4.

ADMISSIONS

7. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purpose of these proceedings.

Citation 1: It is alleged that Anton Suberlak acted in a conflict of interest in representing G.A. and W.W. as well as NW Inc. contrary to the Code of Conduct and that such conduct is deserving of sanction

Statement of Facts

8. In June of 2015, G.A. and W.W. engaged NW Inc. to perform a major renovation project on their home. NW Inc. was a longstanding client of mine.

9. On June 24, 2015, G.A and W.W contacted my office to ask whether I could represent them with regard to the renovation mortgage.

10. A paralegal from my office responded on my behalf to G.A and W.W. by email that:

> "[NW Inc.] is a client of ours but we can facilitate both sides of the transaction so long as you are comfortable signing a conflict letter – if there is an issue that arises between yourselves and [NW Inc.] that we can't resolve, you will at that time be asked to get your own lawyer".

11. G.A. responded that "I am comfortable taking on different representation should a conflict arise."

12. Despite the reference in my paralegal's email to a conflict letter, no formal conflict of interest letter was provided to G.A. and W.W. regarding my representation of both them and NW Inc. My discussion with and disclosure to the client about multi-party representation was not reduced to a formal letter. I should have confirmed the arrangement with a formal letter.

13. I failed to comply with the requirements of the section 3.4-5 of the Code of Conduct before acting for G.A. and W.W. as well as NW Inc. with regard to the renovation project, particulars of which are:

    a. I failed to advise G.A. and W.W. of the advantages and disadvantages of the joint retainer.

    b. I failed to ensure that joint retainer was in the best interests of G.A and W.W in light of my long-standing relationship with NW Inc.

c. I failed to advise G.A and W.W in writing that no information in connection with the matter from one client would be treated as confidential in so far as the others were concerned.

Builder's Liens

14. The renovations commenced and several draws from the construction mortgage were handled by my firm.

15. In February 2016, a builder's lien was erroneously filed against G.A. and W.W.'s title by an electrical subtrade. W.W. began contacting other trades to see if they had been paid.

16. On February 8, 2016, I emailed W.W. asking her to immediately refrain from contacting any tradespersons as it was compromising NW Inc.'s relationship with existing trades. I indicated that NW Inc. was taking steps to have the lien discharged, and "…it [the discharge of the lien] doesn't happen in an instant, and having to write an additional email of this nature is not particularly helpful".

17. Eventually that lien was discharged. However, two additional builder's liens were filed against G.A. and W.W.'s title. I prepared and filed an Originating Application on September 20, 2016 seeking discharge of that lien, naming NW Inc. as the Applicant and including G.A. and W.W. as Respondents. I failed to inform G.A. and W.W. that I was naming them as Respondents in the Action, failed to advise G.A. and W.W. as to the potential ramifications of their being so named, failed to explain to G.A. and W.W. that no particular relief was being sought against them, and that they were named as Respondents as a formality, as they were the registered owners of the subject property, and failed to seek their consent to do so.

18. The second lien was eventually discharged pursuant to a settlement between NW Inc. and the lienholder, without any cost to G.A. and W.W.

Holdbacks

19. One of the documents I prepared and had G.A. and W.W. sign was an Irrevocable Order for Payment (the "IOP"). I verbally advised G.A. and W.W. prior to the signing of the IOP as to the potential ramifications of the IOP should they have disagreements with NW Inc. regarding the completion of the renovations. I typically do not confirm that advice in writing, and did not do so on this file.

20. Disagreements developed between G.A. and W.W. and NW Inc. over the completion of some of the renovations. On June 3, 2016, W.W emailed me to provide a list of outstanding deficiencies regarding the renovation and a calculation of the amount to be deducted from NW Inc.'s Statement of Account.

21. I replied the same day advising that three of the listed items should not be subject to holdback. I wrote that I wanted to "ensure we are allowing for a more appropriate amount of funds to be released" and that "these items will be added to the amount to be released to [NW Inc.] today".

22. On June 4, 2016, W.W replied:

> "We do not agree with this request and do not authorize these funds to be released without resolution of the points indicated below. As your client, we expect you have an obligation to advocate on our behalf and work towards a mutually acceptable resolution; at this point, we are being very clear that we hold the position that the payments requested do not reflect satisfactory completion of work. An arbitrary decision to release funds at [NW Inc.'s] insistence does not seem to have our best interests in mind…
> Tony, we do not feel that we're at a point of adversarial relations with [NW Inc.], ([T] was working very hard to ensure the project was completed to his, and [NW Inc.'s] high standard, and [M] gave us every impression that our trust in NW Inc. is justified) are you able to maintain duty of care on our behalf in this manner? As our lawyer, what is your suggestion?"

23. Upon receipt of W.W.'s June 4, 2016 email, it was clear that G.A. and W.W. and NW Inc. were in an actual conflict. At that point, I had an obligation to withdraw from acting for either party, or as a minimum refer G.A. and W.W. for independent legal advice. Instead, I responded on June 7, 2016 stating that some of the requested holdbacks were inappropriate and were covered by the New Home Warranty. I also said:

> "Your manner of review is not standard practice and quite unusual for both them and I and has resulted in additional time and cost (which they have been willing to provide all in a desire to keep their customer happy)-however, given the nature of your demands, and the suggestion that I am somehow compromised in acting on the matter, I want to make sure this doesn't blow up when there is relatively little to finish. If it does become contentious, or I feel my professional integrity is being compromised, I have to withdraw from the transaction and both parties will need to seek new counsel (adding costs and time etc.)-I don't see that being the case here if we can get your cooperation on these 3 points immediately."

24. On June 17, 2016 G.A. emailed me to provide an updated calculation of the deficiencies and the amount to be paid to NW Inc. My response referred to the IOP and stated that my firm would be releasing all but $35,000 in accordance with what NW Inc. had requested.

25. On June 20, 2016, G.A emailed me to confirm their instructions that funds were not to be released to NW Inc. without his and W.W.'s approval of completed work. I replied to them that I was required to release funds to NW Inc. based upon the IOP, and that the New Home Warranty would address the deficiencies.

26. On September 28, 2016, I advised G.A. and W.W. that because the stucco remained

outstanding on their project, NW Inc. had agreed to an $8,000 holdback. Aside from that, all remaining funds would be released.

27. When G.A. and W.W. expressed their unhappiness with the release of the remaining funds. I replied:

> "[NW Inc.] is my client and they give me instructions… That was made clear from the outset and is set out in the conflict letter signed by all of [*sic*] buyers."

In fact, no conflict letter had been signed by G.A. and W.W., and at the time of sending this email G.A. and W.W. remained my clients. At the time of my reply, I erroneously believed that I had the parties sign my standard form no representation letter, which is what I was intending to reference in my response.

28. I have learned a lot from my mistakes in this matter, and over the last 4 years since these incidents. I have adopted proactive measures to avoid such mistakes in the future.

Admissions of Guilt

29. I admit that I acted in a conflict of interest in representing G.A. and W.W. as well as NW Inc. contrary to the Code of Conduct, and in particular sections 3.4-2,3.4-3, and 3.4-5, and that such conduct is deserving of sanction

Citation 2: It is alleged that Anton Suberlak acted against his former clients G.A. and W.W. contrary to the Code of Conduct and that such conduct is deserving of sanction

Statement of Facts

30. G.A. and W.W. sued NW Inc. in Provincial Court with regard to alleged outstanding deficiencies in the renovation (the "Civil Claim").

31. My firm was retained to defend NW Inc. from the Civil Claim. The consent of G.A. and W.W. to the firm acting against them was not sought. Members of my firm, under my direction, assisted with the preparation of the Dispute Note and Counterclaim by NW Inc. I personally discussed legal options with NW Inc. and offered advice regarding the Statement of Defence. I directed my articling student to work on the defence.

32. On February […], 2018, the parties appeared before a Provincial Court Judge, advised that a settlement had been reached, and requested an adjournment so NW Inc. could have a Mutual Release prepared.

33. On February 27, 2018 a Mutual Release prepared by a member of my firm at my direction was provided to G.A. and W.W.'s representative in the civil proceedings. As well as releasing NW Inc., the Mutual Release also purported to release my firm.

34. On March […], 2018, G.A. and W.W.'s representative brought the proposed wording of

the Release to the Court's attention. My articling student attended that court proceeding for the sole purpose of seeking an adjournment. The Court ordered that my firm draft a form of release which excluded my firm from the release, set a deadline for payment of the settlement funds into my firm's trust account, and ordered that my firm pay G.A. and W.W.'s costs in the amount of $250.

35. On April 2, 2018 I wrote to G.A. and W.W. noting that my firm may be appealing the Judge's order, and indicating:

> "I am frankly concerned that both our client and our firm are now being slandered before the court with false information. Furthermore, I have yet to hear the allegations against our firm from you directly which has led to the reluctance to sign a standard form release in relation to work which had nothing to do with our office. If you are concerned about certain steps made at closing, we have always been available and willing to sit down with the parties to clarify, but we have heard nor received and [sic]such written request."

36. The Judge's order was not appealed and the cost award against my firm of $250.00 was paid to G.A. and W.W. by my firm's cheque dated April 13, 2018.

Admissions of Guilt

37. I admit that I acted against my former clients G.A and W.W. contrary to section 3.4-6 of the Code of Conduct, and that such conduct is deserving of sanction.

Citation 5: It is alleged that Anton Suberlak failed to respond promptly and completely to communications from the Law Society and that such conduct is deserving of sanction.

Statement of Facts

Involvement in NW Inc.'s Defence of the Civil Claim

38. On April 11, 2018, I spoke to LSA Conduct Counsel regarding her concerns that I was in a conflict with regard to the civil claim. I erroneously indicated that I was not involved in NW Inc.'s defence of the claim, and stated that my firm had merely sent an agent to obtain an adjournment on behalf of NW Inc.

39. In my reply to Conduct Counsel on November 25, 2019, I stated that the civil claim was only brought to my attention after the parties had reached a settlement.

40. While reviewing my files for the matter as provided on November 26, 2019, Conduct Counsel found a memo to file prepared by a member of my firm and addressed to me which discussed a legal strategy for NW Inc. to deal with G.A. and W.W.'s deficiency complaints. On December 31, 2019, Conduct Counsel requested further information from me as to the extent to which my firm was involved in the civil claim.

41. In response, on January 17, 2020 I advised that members of my firm assisted with the preparation of the Dispute Note and Counterclaim by NW Inc. and that my

articling student attended the Provincial Court on March […], 2018 at my direction, to obtain an adjournment, as the parties had reached a resolution but the principal of NW Inc. was out of town and unavailable to appear in Court on that date. Included with my response was the entirety of my paper files for three matters – G.A. and W.W.'s mortgage, Builder's Liens regarding G.A. and W.W.., and the civil claim brought by G.A. and W.W. against NW Inc. The civil claim file included an email dated November 8, 2017 from the principal of NW Inc. to me asking that my firm deal with the Claim, my emails to an associate requesting that she prepare a defence and providing suggested grounds of defence, and my emails with the principal of NW Inc. discussing the defence as well as the strategy for resolving the file. I had completely forgotten about my involvement in the preparation of the defence of the claim until I had located those file materials. Even though the misinformation I provided to the Law Society was inadvertent, I nonetheless acknowledge that I did not respond fully and completely to the Law Society.

Conflict Letter

42. During my conversation with LSA Conduct counsel on April 11, 2018, I stated that I always obtain consent to conflict letters.

43. On October 30, 2019, LSA Conduct Counsel asked me to provide the LSA with additional information, including signed conflict letters and a complete copy of my client files regarding the matter and any related matter.

44. My November 25, 2019 response to Conduct Counsel indicated that a copy of the files would be arriving the next day, and that it would include the conflict letters. At the time, I thought that I had the correct letter signed by G.A. and W.W. I later realized that the conflict letter I had was with respect to their financing, i.e. a conflict letter related to my representation of both the lender and the borrowers. I did not have a formal conflict letter with respect to acting for both G.A./W.W. and NW, but only the email sent by my paralegal on my behalf.

45. On December 31, 2019, Conduct Counsel advised me by email that in fact the only conflict letter in the copy of the files provided related to G.A. and W.W. and the mortgage lender. She again requested that I provide the conflict letters regarding the potential conflict between G.A. and W.W. and NW Inc.

46. On January 17, 2020 I responded to Conduct Counsel and confirmed that in fact there were no signed conflict letters regarding the potential conflict in the joint retainer of my firm by G.A. and W.W. and NW Inc. I advised Conduct Counsel that I was mistaken in my recollection. While inadvertent, I nonetheless provided inaccurate information to the Law Society.

Incomplete Files

47. Contrary to my representation, the copy of the files provided to the LSA in November of 2019 did not include all files relating to G.A., W.W., and NW Inc., and in particular, by inadvertence on my part, did not include the file relating to the civil claim. The entirety

of all the files was not provided to the LSA until January 17, 2020.

Admissions of Guilt

48. I admit that I failed to respond promptly and completely to communications from the Law Society, contrary to section 7.1-1 of the Code of Conduct, and that such conduct is deserving of sanction.

ACKNOWLEDGEMENTS

49. I acknowledge that I have had the opportunity to consult legal counsel.

50. I acknowledge that I have signed this Statement of Facts and Admission of Guilt freely and voluntarily.

51. I acknowledge that I understand the nature and consequences of this Admission.

52. I acknowledge that, although entitled to deference, the Hearing Committee is not bound to accept a joint submission on sanction.

DATED THE 24th DAY OF September, 2020

"Anton Suberlak"
Anton Q. Suberlak

Schedule 2

Reprimand

I thank you for your cooperation in resolving this matter. You have admitted to several serious breaches of the Law Society Code of Conduct. Ours is a self-governing profession, and all members must be diligent in ensuring that we do everything we can to maintain the privilege of self-governance. An important part of this is maintaining the public trust.

Your conduct in this matter undermined the trust of several people who thought you were their lawyer and who expected you to act in their best interest. This affects not only those individuals but also any other members of the public who may hear of this and question whether they can rely on their lawyer.

Maintaining our self-governing status also requires all of us to ensure we are fully and completely responsive to communications and requests from the Law Society. It is important to ensure that when the Law Society makes inquiries of you, or requires information, you are accuratein your responses and ensure that you are providing a complete picture of what occurred. Failure to do so raises issues about your governability that could have serious implications should you fall into the conduct process again in the future.

While the Law Society is satisfied that your failures in this regard were inadvertant, our profession requires an exacting standard that leaves no room for sloppiness when addressing serious matters such as this.

It appears that, fortunately, your clients were not ultimately harmed by your conduct in this case. However, they were, at the very least, significantly inconvenienced. You must do better in providing legal services to people who rely on you, as you and they may not be so fortunate if something like this happens again.

So you are hereby reprimanded. I will expect that you will do your best to abide by the Code of Conduct going forward, and expect that you will strive to do better so that we do not see you in this kind of situation in the future. Do not disappoint yourself, your clients, or your regulator.

Best of luck to you with your practice going forward.