

**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 W. JOHN ANDRESEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee

Bud Melnyk, QC – Chair

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
W. John Andresen, QC – Self-represented

Hearing Date

February 19, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. A Single Bencher Hearing Committee was convened on February 19, 2021 to conduct a hearing into the appropriate sanction in respect of the conduct of W. John Andresen.
2. Mr. Andresen entered into a Statement of Admitted Facts and Admissions of Guilt in relation to his conduct. Those facts can be summarized as follows:
 - (a) Mr. Andresen was retained by a bank (“client”) to prepare and register a mortgage, which was to be a first priority charge. In furtherance of his instructions Mr. Andresen forwarded funds to a prior mortgage lender to payout the existing mortgage and at the same time he requested a discharge of mortgage from that prior lender.
 - (b) Over some 14 months Mr. Andresen attempted to communicate four times with the prior lender requesting the discharge. Thereafter the matter was not diarized, though no discharge had yet been received.
 - (c) About two years went by and the client tried contacting Mr. Andresen regarding the status of the Certificate of Title so that the bank could confirm they had a first mortgage charge. Mr. Andresen was unresponsive.
 - (d) Mr. Andresen was finally able to obtain the necessary discharge of mortgage, which happened some four years after the client’s mortgage was registered.

Preliminary Matters

3. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into the appropriate sanction proceeded.

Statement of Admitted Facts and Admission of Guilt

4. The Conduct Committee found the Statement of Admitted Facts and Admission of Guilt acceptable. Accordingly, pursuant to subsection 60(4) of the *Legal Profession Act* (the *Act*), it is deemed to be a finding of this Hearing Committee (Committee) that W. John Andresen's conduct is deserving of sanction under section 49 of the *Act* in relation to the following citation:

It is alleged that Mr. Andresen failed to provide timely, conscientious and diligent services to his client and that such conduct is deserving of sanction.

5. As provided by subsection 60(3) of the *Act*, once the Statement of Admitted Facts and Admission of Guilt was accepted by the Conduct Committee, the hearing into the appropriate sanction could be conducted by a single Bencher.
6. After reviewing all of the evidence and exhibits, and hearing the submissions of the LSA and Mr. Andresen, for the reasons set out below, the Committee has determined that a fine together with a reprimand and costs is appropriate.

Submissions on Sanction

7. There was a joint submission by the LSA and Mr. Andresen for the following sanction:
 - (a) A reprimand;
 - (b) A fine of \$1,000.00; and
 - (c) Costs to be capped at \$3,000.00.
8. In support of the joint submission, counsel for the LSA provided four decisions:
 - (a) *Law Society of Alberta v. Andresen*, 2016 ABLs 43,
 - (b) *Law Society of Alberta v. Chiu*, 2010 ABLs 1,
 - (c) *Law Society of Alberta v. Gillis*, 2014 ABLs 1; and
 - (d) *Law Society of Alberta v. Lynham*, 2013 ABLs 8.
9. Counsel for the LSA made the following submissions:

- (a) The facts in this matter were reasonably similar to the tendered decisions, and in particular the matter of *Law Society of Alberta v. Chiu*, 2010 ABLS 1 provided for a similar sanction.
 - (b) The proposed sanction was consistent with the general and specific sentencing factors as more particularly detailed in the LSA Hearing Guide.
10. Mr. Andresen made submissions detailing his transition from a broadly based practice to a practice that is more limited to matters involving real estate, corporate and commercial and estate planning.

Decision on Sanction

11. Counsel for the LSA and Mr. Andresen confirmed their understanding that the Committee is not bound by a joint submission on sanction. However, a Committee is required to give serious consideration to a joint submission, should not lightly disregard it and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.
12. While prior decisions are not binding, I would agree that any sanction in this matter should avoid undue disparity with other decisions. In this respect, I find that the submitted cases are reasonably similar to Mr. Andresen's conduct and therefore cogent.
13. After reviewing all of the evidence and exhibits, the submissions of the LSA and the submitted cases, I have 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.
14. The approach taken by Mr. Andresen in dealing with this matter through a Statement of Facts and Admission of Guilt also avoided an unnecessary contested hearing, witness inconvenience and process costs.

Concluding Matters

15. The exhibits, other hearing materials, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).
16. It is further ordered that:
- (a) The appropriate sanction with respect to W. John Andresen's conduct is a reprimand, which is reproduced herein, and a fine of \$1,000.00.
 - (b) Mr. Andresen is to pay \$3,000.00 in costs.

- (c) The fine of \$1,000.00 and the costs of \$3,000.00 are payable and due by March 31, 2021.
- (d) No Notice to the Profession or Notice to the Attorney General is to be made.

17. The following reprimand was delivered orally to Mr. Andresen at the hearing:

Mr. Andresen you are long time member of the Law Society of Alberta. You have acknowledged that you failed to ensure that a discharge of mortgage was obtained in a timely manner, that this then resulted in your client's mortgage not being registered as a first charge. Coupled with these failures, you also did not respond to communications from your client. Fortunately, you were able to remedy the mortgage discharge and title issues without any apparent financial loss to the bank. However, your actions have put your professional reputation and integrity at risk and your client's interests at risk. In making these comments today and in expressing this reprimand today, I urge you to constantly have at the forefront of your mind and your practice the need for diligence in diarizing of matters and in providing timely responses.

Mr. Andresen, I acknowledge your co-operation with the Law Society leading up to today and resolving these complaints by admitting guilt and by proceeding with a single Bencher hearing. Your admissions have permitted these citations to be resolved on a more efficient basis, which is not just a benefit to you, but is a benefit to the public and to the Law Society.

In concluding, I wish you the best as you move forward and thank you for your attendance today.

Dated at Red Deer, Alberta, February 22, 2021.

Bud Melnyk, QC

IN THE MATTER OF DIVISION 1 OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c L-8

- AND -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
W. JOHN ANDRESEN, Q.C.
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE HE20200153

STATEMENT OF ADMITTED FACTS AND
ADMISSIONS OF GUILT

Professional Background

1. I was admitted as a member of the Law Society of Alberta on April 28, 1977.
2. Since then, I have practiced primarily as a sole practitioner in High River, Alberta.
3. At all material times, my status was “active/practicing” and I practice primarily in the areas of Real Estate Conveyancing, Family Law, and Estate Planning and Administration.

Procedural Background

4. On September 24, 2018, the Law Society received a complaint from the mortgage administration department of a client of mine, which was a bank (the “**Bank**”), alleging that I had failed to register mortgage documents for a transaction that had closed in 2015 and that I had failed to respond to the Bank’s follow up communications (the “**Complaint**”).
5. The LSA reviewed the Complaint and referred it to the Conduct Committee.
6. On June 16, 2020, the Conduct Committee directed that the following citation be dealt with by a Hearing Committee:

It is alleged that W. John Andresen failed to provide timely, conscientious and diligent service to his client and that such conduct is deserving of sanction.

Facts

7. In April 2015, the Bank agreed to provide an equity take-out mortgage to two borrowers/mortgagors.

8. On April 1, 2015, I was retained to act on behalf of the Bank and received instructions to do the following (among other tasks);
 - a. prepare the mortgage documents:
 - b. use the mortgage proceeds to pay out an outstanding mortgage (the "**Prior Mortgage**") from a prior lender (the "**Prior Lender**");
 - c. register the Bank's mortgage as a first priority (the "**Bank's Mortgage**"); and
 - d. provide confirmation of the registration within 30 days of the proceeds being advanced.
9. On April 9, 2015, I sent a trust cheque and the discharge documents to the Prior Lender and requested that I be provided with a registrable discharge of the Prior Mortgage within 30 days.
10. That day, I faxed confirmation to the Bank's agent that the funds had been disbursed and that the Bank's Mortgage had been submitted for registration to the Land Titles Office.
11. On April 16, 2015, the Bank's Mortgage was registered. The following day, I provided all relevant materials and reports to the Bank's agent.
12. Consequently, as of April 16, 2015, all that was left to do was provide the Bank with the final Certificate of Title after receiving and registering the discharge from the Prior Lender. Until then, the Bank's mortgage would remain as a second charge on title.
13. Over the next 14 months, my office followed up four times with the Prior Lender, but received no response (September 21, 2015; November 9, 2015; February 9, 2016; and June 8, 2016).
14. Unfortunately, after June 2016, this matter was left undiarized and no more follow ups were done.
15. Starting in August 2017, the Bank attempted to communicate with me four times about the missing Certificate of Title (August 30, 2017; October 6, 2017; November 14, 2017; and April 24, 2018).
16. I did not respond to any of these communications.
17. On May 16, 2018, a Bank representative emailed my office to advise that a complaint would be submitted to the Law Society. The following week, on May 23, 2018, one of my paralegals responded as follows:

Please see the discharge and DRR for submission. I will forward the title when I receive back from Land Titles, they are currently working on documents received May 9, 2018.
18. This email was incorrect in that my office had not yet received the discharge from the Prior Lender and therefore could not submit it to the Land Titles Office.

19. On July 5, 2018, a representative of the Bank emailed me, asking that I respond as soon as possible. I did not respond to this email.
20. As noted, on September 24, 2018, the Bank submitted a complaint to the Law Society.
21. A copy of the complaint was sent to me on January 7, 2019. However, over the next two months, I experienced communications issues with the Law Society. Nevertheless, on March 20, 2019, I connected with the Law Society and started to rectify the problem.
22. In March 2019, my office followed up with the Prior Lender, who advised that they had a discharge dated May 2015 on file, but had never sent it to me. Instead of incurring additional delay, a new discharge was executed and provided to my office on April 1, 2019.
23. On April 4, 2019, the discharge was registered with the Land Titles Office. Shortly thereafter, a Certificate of Title was provided to the Bank.
24. On April 12, 2019, I provided my response to the Complaint in which I stated that my office had no record of being contacted by the Bank. Regrettably, my response was based on an incomplete set of documents and a misunderstanding of the true state of affairs. I have since reviewed all of the file materials and acknowledge that the Bank attempted to contact me several times.

Admissions of Guilt

25. I admit that I failed to provide timely, conscientious, and diligent service to the Bank, particulars of which are that,
 - a. I failed to ensure that my office had received the discharge from the Prior Lender resulting in my failure to register the Bank's Mortgage as a first charge on title; and
 - b. I failed to respond to the Bank's follow up communications;all of which is contrary to Rule 3.2-1 of the *Code of Conduct* and is conduct deserving of sanction as defined in section 49 of the *Legal Profession Act* (the "**Act**").

Acknowledgements

26. I acknowledge and agree that,
 - a. I have had the opportunity to obtain independent legal advice;
 - b. I have signed this Statement voluntarily and without any compulsion or duress.
 - c. I understand the nature and consequences of my admissions; and
 - d. I admit the facts contained in this Statement and acknowledge that the Statement shall be used during the hearing of these proceedings.

**THIS STATEMENT OF ADMITTED FACTS AND ADMISSIONS OF GUILT IS MADE THIS
26 DAY OF NOVEMBER 2020.**

“W. John Andresen”
W. JOHN ANDRESEN