

# DISCIPLINE DIGEST

## The Society of Notaries Public of British Columbia

April 2018

Daryl Robbins  
Commissioned: May 2012

Hearing Date: January 23, 2018

Panel: Daryl McLane (chair), Marco Castro, Hassan El Masri, Linda Manning, Patricia Wright

### **Background**

1. This was a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* of the report of the inquiry to determine whether the member is guilty of any of the conduct described in s. 28(1) as professional misconduct or a breach of a provision of the *Act* or a regulation or rule made under it or of a bylaw of the society, or conduct that in the opinion of the directors is contrary to the best interests of the public or the profession or tends to harm the standing of the notarial profession.
2. The inquiry into this matter was conducted March 22, 2017. The member attended at that time and the member and the Society made submissions to the panel. The inquiry panel report dated October 4, 2017 was reviewed by the Directors.
3. Counsel was present to assist the panel members at the hearing and the directors on review and in writing this report.

### **The Notice of Inquiry**

4. The Notice of Inquiry received by the member alleged the following:

That in your work on the M conveyance sale file you breached Rule 10.01 of the Rules of the Society by failing to fulfill the following undertakings imposed by Counsel:

*Our trust cheque for the balance due to the Seller on completion as specified in the approved Seller's statement of adjustments will be made available to you, in trust, on your undertakings as follows:*

2. *To ..... payout and legally obligate the charge holder(s) to provide a Discharge of the following charge(s):*

b. *Bylaw Contravention Notice FBxxxxx*

**Member's History**

5. The member was commissioned on May 3, 2012 and has had no prior discipline history.

**The Joint Submission on Facts, Admission, and Proposed Penalty**

6. A Joint Submission on Facts, Admission, and Proposed Penalty (the "Joint Submission") was agreed to by the parties prior to the inquiry and was provided to the inquiry panel for consideration.
7. The inquiry panel accepted the facts, admissions and proposed penalty contained in the Joint Submission.
8. On review, the directors accept the findings of the inquiry panel and adopt the facts and admissions contained in the Joint Submission, which are set out below.

**Facts**

9. In June of 2016, the member was retained by the sellers to act for them with respect to their sale of a property in Courtenay, B.C., scheduled to close on June 30, 2016.
10. The buyer was represented by local Counsel.
11. By letter dated June 13, 2016, Counsel sent the member a letter enclosing the usual sale documents and saying that the sale proceeds would be provided on closing on his undertaking to clear title of

*"a. Mortgage No. CAxxxxx in favour of [Lender]" and the typical CBA undertakings regarding the Discharge of that Mortgage. The letter also said that sale proceeds would be provided on the member's additional undertakings to:*

*"1. ensure payment of any and all outstanding amounts owing to the Strata Corporation including but not limited to strata maintenance fees; and*

*2. confirm that the property taxes have been paid".*

Counsel did not say that he would be imposing any other undertakings on the member. The June 13th letter enclosed a Statement of Adjustments; GST Certificate; Certificate of Residency; Strata Forms F and B, and Confirmation of paid 2016 City of Courtenay Property Taxes.

12. On his review of the documents provided by Counsel, the member and Counsel agreed that the Statement of Adjustments required amending to include an adjustment for the home insurance.
13. By letter dated June 16, 2016, marked "Amended", Counsel provided the member with a new letter stating that it enclosed the same documents as the June 13th letter. In fact, though, the letter only enclosed a new Statement of Adjustments marked "Amended" and a copy of a Corporation of the City of Courtenay Notice of a Bylaw infraction, registered against the seller's title as number FBxxxxx. In his letter, Counsel added another proposed undertaking that the member clear title of the said Bylaw Contravention notice FBxxxx. The undertaking in the June 13th letter stated:

*"Our trust cheque for the balance due to the Seller on completion as specified in the approved Seller's statement adjustments will be made available to you, in trust, on your undertakings as follows:*

*To pay to each of the Seller's existing chargeholder(s) the amount required by its payout statement to pay out and legally obligate the chargeholder(s) to provide a Discharge of the following charge(s):*

- a. Mortgage No. CAxxxxx in favour of [Lender]*
- b. Bylaw Contravention Notice FBxxxxx."*

Followed by the usual CBA undertakings to verify payout and obtain and register a Discharge.

14. The member had conducted a title search as part of his handling of the sale file, but did not question the bylaw contravention notice with his client or pull a copy of it from the Land Title Office for review.
15. By letter dated June 17, 2016, the member sent the executed Seller's documents back to Counsel. Without restating the undertakings, the member's letter said:

*"The enclosed documents are returned to you on your undertakings as set forth in your letter of June 16, 2016 and we acknowledge the undertakings placed on our office as contained therein".*
16. The member did not review the June 16th letter other than to review the Amended Statement of Adjustments and was not aware that Counsel had imposed a further undertaking with respect to the Bylaw Contravention Notice.
17. The transaction completed and the sale proceeds were paid to the member in trust.

18. In September of 2016, the member received and registered a discharge of the Mortgage CAxxxxx in favour of [Lender] and reported discharge particulars to Counsel.
19. By letter dated October 4, 2016, Counsel wrote to the member acknowledging the release of the Mortgage but asking for confirmation of the discharge of the Bylaw Contravention Notice.
20. By letter dated December 19, 2016, the member wrote to Counsel advising him that he had not dealt with the Bylaw Contravention Notice on closing as he had not noticed that an undertaking with respect to it had been inserted into the June 16th amended letter. The member advised Counsel that he had discussed the matter with an official for the City of Courtenay who said that the contravention was not capable of being paid out as the building did not meet the BC Building Code as constructed and was constructed without proper permits. Removal of the notice from title would require decommissioning parts of the house and/or performing upgrades to meet building codes.
21. In late January of 2017, Counsel complained to the Society of Notaries that the member had breached his undertaking.

### **Admissions**

22. The member admits that the undertaking was breached. The member admits that he did not review the June 16th letter other than to verify that the required amendment to the Statement of Adjustments had been made regarding the insurance premium to be adjusted between the parties.
23. The member admits that his breach is professional misconduct, is contrary to the best interests of the public and harms the standing of the Notarial profession.
24. At the inquiry, the member indicated that he did not remember receiving the Bylaw Contravention Notice with the June 16 letter.

### **Decision on Liability**

25. The directors are satisfied on review that the member engaged in the conduct alleged in the Notice of Inquiry.

### **Penalty**

26. After reviewing the issue of liability, the directors considered the penalty proposed in the Joint Submission.
27. The Society and the member proposed the following penalty:
  - a. A reprimand be placed in the member's record;

- b. The member pay a fine in the amount of \$2,500.00;
  - c. The member pay a contribution to costs in the amount of \$1,000.00.
28. The directors accept the proposal as being fair and in keeping with the penalty imposed for conduct of a similar nature. Accordingly, the directors assess the penalty as proposed.
29. The directors agree with the comments of the inquiry panel. This matter serves as a reminder to members that they must carefully review the terms of any undertaking to ensure that the requested undertaking is within the control of the member and is capable of being complied with or performed by that member. Although undertakings are a necessary part of a notary's practice and are frequently used, they cannot be treated casually. Undertakings are personal in nature and are essentially promises given by professionals.
30. In this case, the Bylaw Contravention Notice was not something that was within the member's power to have discharged because of the nature of the contravention. Nevertheless, the member promised to have the Bylaw Contravention Notice discharged and must now answer for failing to make good on his promise.