

DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

April 2011

William Rutledge

Commissioned: May 2004

This is a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* to review the report of the inquiry panel in this matter and 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.

The inquiry into this matter was conducted March 10, 2011; at that time the member and the Society provided to the inquiry panel a proposed resolution of the complaint which was recorded as an agreed statement of fact and penalty. The member was not present at the inquiry. The inquiry panel report dated March 15, 2011 was reviewed by the directors on March 24, 2011.

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 sent to the member by the Society informed the Member that the Society was reviewing the Member's conduct in the following matter:

That when you acted for O'RK Ltd. in September of 2010 and for TTD Ltd. in December of 2010, you provided legal advice and written legal opinions on the legal entities of the two corporations, the giving of which advice is contrary to Section 18 of the Notaries Act thereby committing a breach of Sec. 28 (1)(c) of the Notaries Act, [RSBC 1996] Chapter 334 and a breach of Rule 11.01 of the Rules of the Society of Notaries Public of British Columbia.

Member's history

1. The member has been a member since 2004. He has no discipline history.

The Agreed Statement of Fact and Penalty and findings of the Inquiry

2. By way of agreement between the member and the Society of Notaries Public, the member admits the facts that follow, which were found by the panel to be the facts of the Inquiry:

The First Transaction

3. In or about September 2010, the member acted for O’RK Ltd. (the “First Company”) with respect to its purchase of Property in Parksville, British Columbia (the “First Transaction”).
4. Lawyers C & Co. acted for the First Company’s lender.
5. In anticipation of closing the First Transaction, C & Co. provided the member with financing documentation. The documents enclosed for execution by the First Company included a form of opinion letter.
6. By letter dated September 24, 2010, the member sent a letter to C & Co. returning documents, including an opinion letter. The opinion letter was on the member’s letterhead and said, in part:

“We have also examined such records, documents and questions of law as we consider necessary for the purposes of this opinion.”

The letter further gave the member’s opinion that:

2. *“The corporation has full corporate power and capacity to create, execute and deliver the Security;*
 3. *The Security has been duly authorized, executed and delivered by the Corporation to the Lender; and*
 4. *“The authorization, execution and delivery of the Security does [sic] not constitute a default under the constituting documents of the Corporation, or of any instrument to which the Corporation is a party and which we are aware.”*
7. The foregoing opinion and other documents were accepted by C & Co. and the lender and the First Transaction completed.

The Second Transaction

8. Between July and mid-December 2010, the member acted for TTD Ltd. (the “Second Company”) with respect to their purchase of two lots in Nanaimo, British Columbia (the “Second Transaction”) closing on December 3, 2010.
9. Lawyers B & Co. acted for the Second Company’s lender, the same lender as in the First Transaction.

10. By letter dated December 2, 2010, received at 3:30 p.m., B & Co. provided the member with various financing documents for execution by the Second Company. One of the requirements of B & Co. stated in the said letter was that the member was to provide them with an opinion letter in the form provided as a draft.

11. By letter dated December 3, 2010, the member returned the closing security documents to B & Co. including a letter of opinion on his letterhead. The letter of opinion stated in part:

“We have also review [sic] the constating documents of the Borrower and such other records of the Borrower and such other certificates of officers of the Borrower, corporate records, certificates of public officials and other documents as we have deemed relevant and necessary as the basis of the opinions hereinafter set for[sic].

Based on and relying upon the foregoing, we are of the opinion that:....

2. the Borrower has full corporate power and authority to own its property and carry on its business

3. the Borrower has full corporate power and authority to borrow the funds....

4. all necessary actions and proceedings have been taken by the Borrower and its directors and shareholders to duly authorize the execution, issue and delivery of the Security Documents

5. the Security Documentshave been duly and validly executed and delivered by the Borrower to the Lender...”

12. B & Co. received the documents from the member. B & Co. noted that the member gave his opinions relying on outdated corporate search documents dated September 27, 2010, all of which were no longer true or accurate. B & Co. further asserted that the member, as a notary public, could not give such legal opinions. B & Co. noted that the opinion certified that the member had reviewed the constating documentation and other documents of the Second Company to advise the credit union and B & Co. that the directors and shareholders of the Second Company took the necessary steps to duly authorize the execution and delivery of the Security Documents. B & Co. conducted updated corporate searches and found that Mr. B, who had executed all the security documents as the director of the Second Company, was not in fact the director of the Second Company.

13. Upon being so informed by B & Co., the member contacted his client who retained its Corporate Solicitor to attempt to resolve the problem and provide the correct documents and opinions to B. & Co. The member and his client negotiated an extension to December 7, 2010 for completion of the Second Transaction.

14. This matter came to the attention of the Society by way of complaint by the lawyer for the lender in the Second Transaction. In his response to the complaint, the member self-reported that he had provided the same opinions in the First Transaction.

15. The member admits that in the Second Transaction he acted in haste and without considering whether he was authorized to provide the opinions that he did. The Second Transaction was closing quickly and his clients were leaving the Province early on December 3, 2010. The member acted in the misguided notion that he could prevent delay and the risk of default for his client. As such, he did not conduct updated corporate searches or consider advising his client to engage his corporate lawyer in the matter.
16. The member also misguidedly considered that because he had provided opinions in the First Transaction, and that those opinions had apparently been accepted by the lender, he was at liberty to provide similar opinions on the Second Transaction.
17. The member also admits that he knew that the lender and C & Co. and B & Co. would all be relying on his opinions with respect to the borrowing security.
18. The member admits that he knows that he should not assume responsibility for giving advice on any matter other than those which come directly within the province of a Notary Public as set out in the *Notaries Act*.
19. The member admits that giving legal opinions on corporate matters is the unauthorized practice of law, contrary to Section 18 of the *Notaries Act*, contrary to Rule 11.01 of the Rules of the Society of Notaries Public of British Columbia and is professional misconduct pursuant to Section 28(1)(c) of the *Notaries Act*.
20. The member admits that his conduct in these two matters is contrary to the best interests of the public and tends to harm the standing of the notarial profession.
21. The Directors met to review the report of the inquiry panel. Given the admissions and agreed facts, the directors had no hesitation in finding that the member has breached the *Act* and Rules as described in the Notice of Inquiry and that the results of those breaches is professional misconduct and contrary to the best interests of the public as admitted by the member.
22. The Directors want to be sure that members of the profession remain aware that a request to perform a function in order to satisfy a closing requirement must be rigorously scrutinized by all practitioners to ensure they are not only capable of performing that function but legally entitled to do so. That is perhaps even more the case when time is short and clients are relying on a notary to get the closing done. Although it is understandable that members want to assist their clients in getting these transactions done, attention to detail must not be sacrificed.

Penalty

23. After deciding the issue of liability, as the member did not appear at the hearing the Directors considered the joint recommendation of the Member and the Society on penalty and agreed to accept it.
24. In view of the Agreed Statement of Fact, the joint submission on penalty, the member's self-report of the First Transaction, his retaining a lawyer to review his opinion in the First Transaction, and his lack of discipline history, the Directors have assessed the following penalty in this matter:
 - a. The member be reprimanded;
 - b. The member pay a fine of \$1,000 a payment toward costs of \$500.