
DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

October 2010

TIAH WORKMAN

Commissioned: December 3, 1992

The Notice of Inquiry dated April 8, 2010 sent to Ms. Workman by the Society alleged that in her capacity as a Notary Public she breached Section 28(1)(c) of the Notaries Act and Rule 10 of the Society's Rules by not fulfilling an undertaking and by not reporting a lender's failure to provide a mortgage discharge within 60 days of closing, as well as failing to provide an appropriate response to communications from a lawyer, contrary to Principle 9-G2 of the Society's Principles for Ethical and Professional Conduct.

The Inquiry Panel met to review the evidence as submitted by the Society and the member.

Background

The Panel found the facts to be as follows:

1. Ms. Workman acted for the vendors of property in a transaction that closed October 29, 2009.
2. The purchasers were represented by counsel, who wrote to Ms. Workman on October 27, 2009 and suggested the usual undertakings, including that they be provided within five business days of closing with proof of Ms. Workman's letter to the chargeholder enclosing payout funds, a copy of the payout statement, a copy of the cheque, and evidence of receipt of those documents by the chargeholder.
3. By way of letter dated October 28, 2009, Ms. Workman accepted the undertakings.
4. The transaction completed as anticipated on October 29, 2009. On that day Ms. Workman sent her trust cheque with the payout amount to the vendor's lender along with the prepared discharge.
5. The following day, correspondence to the purchaser's counsel was prepared enclosing the documents referred to in the undertakings accepted by her on October 28, 2009. That letter was not sent. Ms. Workman has no explanation for why it remained in her file.
6. On December 24, 2009, Ms. Workman's office was faxed with a request from the

purchaser's counsel for a copy of the registered discharge of the vendor's mortgage.

The request was apparently filed with no action being taken to respond to it.

7. On January 6, 2010, counsel again faxed Ms. Workman's office with a request for discharge particulars and an explanation of the reason for the delay. That letter, or possibly regular office procedures, prompted a request to the lender on January 12, 2010 for the discharge. No information, however, was provided to the purchaser's counsel.
8. An email from the purchaser's counsel on February 1, 2010 again sought discharge particulars. There was some question as to whether Ms. Workman's office received this email as it had been sent to the ghosted notary address which was no longer being used by Ms. Workman at the time.
9. On February 12, 2010, a letter was sent to Ms. Workman by the purchaser's counsel detailing their attempts to get a response as to both the discharge particulars and undertakings. Ms. Workman was candid in saying that she did not review the letter in detail and responded on March 1, 2010 by affixing a handwritten note to a copy of the letter stating that her office was not yet in receipt of the discharge from the lender but would advise when it was received and registered. Ms. Workman faxed that handwritten note to the purchaser's counsel.
10. In response to Ms. Workman's note, the purchaser's counsel wrote to Ms. Workman again on March 2, 2010 detailing their ongoing discussions with Ms. Workman's office and attempts to get the undertakings satisfied.
11. It was as a result of the March 2, 2010 letter that Ms. Workman reviewed her file in detail. At that time she noted the file still had her unsent letter of October 30, 2009 and enclosures in it. Ms. Workman wrote to the purchaser's counsel and enclosed the documents required by the undertaking. Ms. Workman went on to describe the steps taken by her office to obtain the discharge, including their recent discussion with the lender that the lender had apparently overlooked executing the discharge but would provide it promptly.
12. Ms. Workman then reported the lack of discharge to the Mortgage Discharge Center and took carriage of the file to register the discharge when it came in shortly thereafter.

Inquiry Findings

Ms. Workman admitted the above facts and that those facts amounted to breaches of Rule 10.06 of the Rules, Principle 9-G2 and Section 28(1)(c) of the *Act*. Ms. Workman assured the panel that her office has systems in place to avoid repetition of this kind of problem.

In addition, Ms. Workman stated that even when those systems relied on staff to perform functions, whether they were performed or not is her responsibility and she understands she is accountable for that.

Given Ms. Workman's admission of the facts and charge, the panel found that she breached Rule 10.06 of the Rules, Principles 9-G2 of the Principles for Ethical and Professional conduct and Section 28(1)(c) of the *Act*.

Penalty Hearing

The Report of the Inquiry was provided to the Member. By agreement between Ms. Workman and the Society, Ms. Workman informed the Board that she agreed with the findings.

The Board panel was pleased to hear that the situation encountered in this matter was an anomaly in Ms. Workman's practice and that the office procedures in place, notably having more than one staff member responsible for reviewing files, reduces the likelihood of recurrence of this problem. The fact of those procedures however underscores the point that it is not only important to have procedures but to train adequately, supervise how procedures are followed and to foster a climate in an office of being alert for problems, ensuring they are noted, brought into the open and addressed promptly.

Additionally, it is worth remembering that procedures are only as good as the attention put to them. In this case, Ms. Workman's candour in stating that she assumed the only issue at the time she received the purchaser's counsel's letter of February 12, 2010 was the matter of discharge particulars serves to remind us all that we are in a detail oriented business and assumptions often lead to trouble.

Although the trouble in this matter turned out to be only a lack of follow up by the lender, it was compounded by the lack of attention it received. As professionals notaries have to bear in mind that their actions (or lack thereof as in this case) have consequences in terms of wasted time, energy and expense at minimum and often even damages. Other professionals have corresponding duties to their clients and at times there are issues we are unaware of that may be considerably worsened by a failure to respond adequately and professionally.

As stated in previous discipline decisions undertakings are one of the foundations upon which our ability to effectively practice rests. In order to continue to be able to give and rely on undertakings it is essential that we jealously protect the way they are adhered to. Satisfaction of undertakings requires particular attention and should always be confirmed by the notary. If staff perform a function in that process they must be made aware of the importance of what they are doing and avoid treating undertakings as routine.

Likewise, there is good reason for the Mortgage Discharge Centre and using it is not only a rule, but is important to the practice of notaries' craft in the province. In order to avoid running afoul of the rule and allowing practice to slip back to the state it was in the time before the Centre was initiated, the panel suggests notaries establish reminders at 30 days post closing to write to lenders requesting unreturned discharges, 45 – 60 days to report to the other professional regarding steps being taken to follow up and to make preparation to report to the Discharge Centre, and 90 days for the notary to personally assume conduct of the file to obtain the discharge.

Happily in this case Ms. Workman's attention led to a prompt resolution. It is a cautionary tale that a notary of Ms. Workman's calibre can at times slip into an unfortunate lapse through the accumulation of small oversights.

Given the admissions and agreed facts, the Board accepted the Report of the Inquiry Panel and found Ms. Workman's conduct to have breached Rule 10.06 of the Rules, Principle 9-G2 and section 28(1)(c) of the *Act*.

The Board does wish to add for the ongoing education of its members and the public, that giving, receiving and fulfilling undertakings will be expected to be done in accord with their importance. The description of the importance ascribed to undertakings in *Law Society of BC v. Heringa*, 2004 BCCA 97, should be taken as the standard for notaries public in the province and we quote from paragraph 10 of that decision, which favourably referred to paragraphs 37 and 38 of the Law Society's reasons as follow:

[37] Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the person providing the undertaking; on the contrary, undertakings are the most solemn of promises provided by one lawyer to another and must be accorded the most urgent and diligent attention possible in all of the circumstances.

[38] The trust and confidence vested in lawyer's undertakings will be eroded in circumstances where a cavalier approach to the fulfillment of undertaking obligations is permitted to endure. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings will be an essential ingredient in maintaining the public credibility and trust in lawyers.

After deciding the issue of liability the Board considered a joint recommendation on penalty. In view of the Agreed Statement of Fact and the joint submission on penalty, as well as the circumstances described in the Inquiry Report and Ms. Workman's discipline history, the Board has determined the following to be an appropriate penalty in this matter:

- a. Ms. Workman will be reprimanded;
- b. Ms. Workman will pay a fine inclusive of costs, of \$1,000.