

## DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

February 2009

GARY RICHARDSON

Gary Richardson  
Commissioned: June 1998

Panel: Akash Sablok, Leta Best, Scott Simpson, Patricia Fedewich, Michael Kravetz

Background:

This was an inquiry pursuant to s. 27 of the Notaries Act to report findings as to whether the member was guilty of any of the conduct described in s. 28(1) as:

- a) professional misconduct;
- b) a breach of a provision of the Act or a regulation or rule made under it, or of a bylaw of the Society.

In addition, pursuant to s. 28(2), the panel inquired into whether the member engaged in conduct that ought to be reviewed by the directors to determine if it is 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.

Because the matter was agreed by the member and the Society, the member decided not to appear at the hearing and the panel proceeded pursuant to s. 31 of the Act. Counsel was present to assist the panel members at the hearing and in writing the report.

The Charge:

The Society acted on two separate complaints. One was a complaint that the member was preparing and filing probate documents for a client (unauthorized practice). The second was an allegation of breach of undertaking.

A Notice of Inquiry dated November 29, 2007 was sent to the member alleging:

- that in his capacity as a Notary Public he breached Section 28 of the *Notaries Act* by engaging in the unauthorized practice of law and making untruthful representations regarding the preparation of probate documents; and
- that he breached Rule 10 of the *Rules* of the Society by failing to fulfill an undertaking to not make use of a Form A Transfer until all required funds were held in trust and to pay the balance owing on the vendor's statement of adjustments.

## The Agreed Statement of Fact and Penalty

By way of agreement between Mr. Richardson and the Society of Notaries Public, the panel received the following facts:

### Unauthorized Practice:

1. The member was retained by R.J.B. and S.M.H. regarding probate matters and a *Wills Variation Act* claim with respect to the estate of WHB.
2. During the course of his retainer, the member advised R.J.B and S.M.H with respect to probate requirements and was instructed to and did prepare probate documents.
3. The Law Society of British Columbia demanded that the member cease the unauthorized practice of law and sign an Undertaking and Covenant, which he did.

### Breach of Undertaking:

4. The member acted for the purchaser of property in a transaction that was to complete on July 10, 2006. The member agreed to the following undertaking imposed by R.T.:

*“not to make use of the Form A Freehold Transfer until such time as you have in your trust account all monies required to be paid by the Purchaser to complete this transaction, including the proceeds which are to be advanced under the Purchaser’s new mortgage, if any; upon acceptance of the Form A Freehold Transfer and the Purchaser’s new mortgage if applicable, for registration in the Kamloops Land Title Office and receipt of satisfactory post-filing index search, you will requisition the proceeds of the Purchaser’s mortgage and upon receipt of the same will forthwith pay the balance of the funds on July 10, 2006 in accordance with the enclosed Vendor’s Statement of Adjustments.”*

5. The purchaser intended to obtain a mortgage from CIBC to pay for the property.
6. On July 10, 2006, the member submitted the Form A Freehold Transfer to the Land Title Office for registration and obtained a registration number.
7. The member advised the bank of the registration number and requested that mortgage funds be advanced to him so that he could payout the seller.
8. CIBC did not advance the mortgage funds that day and advised the member that the funds would not be advanced until the member provided a title insurance policy which was a condition of their mortgage approval contract.

9. The member obtained the required title insurance policy on July 13, 2006 and provided the sale proceeds to R.T. on July 14, 2006.
10. R.T. complained that the member breached his undertaking by failing to provide sale proceeds immediately upon registration of the Transfer and by failing to seek approval in writing to vary the undertaking.

Mr. Richardson made the following admissions:

- The member admits that he prepared and filed probate documents in the estate of WHB, knowing it was the unauthorized practice of law, thereby committing professional misconduct.
- The member admits that he failed to comply with his undertaking to R.T. thereby breaching Rule 10 of the *Rules* of The Society.
- The member admits that an undertaking is a solemn promise to do something and that it can only be varied with the consent in writing of the person who imposed it.

### **Joint Penalty Recommendation**

The parties to this hearing jointly suggested Mr. Richardson be suspended from practice for a period of seven (7) days and pay a fine of \$2,000. Costs for each party will be assumed by that party.

The Board is of the view that the penalty recommendation agreed to by the Society and Mr. Richardson is appropriate in these circumstances in light of the seriousness of the admissions and taking into account Mr. Richardson's lack of discipline history, cooperation and remorse.

Mr. Richardson served his suspension in December of 2008 and has now been reinstated.