

## DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

July 2007

Adrian L. Wong  
Commissioned: July 1985

The member was charged with a breach of Section 18 of the *Notaries Act* and Rule 11.04 of the Rules of the Society by witnessing a Separation Agreement and a Nuptial Agreement for two separate parties in 2006 and 2003 respectively.

### Background

The following facts were agreed by the member and the Society by settlement:

The C Matter:

1. In March 2003, the member was asked by RC and SC to witness a form of Nuptial Agreement and Affidavit of Acknowledgement (the "Agreement" and the "Affidavit") that they had with them.
2. The member informed RC and SC that he could not give them legal advice with respect to the documents and they acknowledged the information and told him that they did not require legal advice.
3. The member had RC sign a form of legal advice waiver that clearly confirmed that the member was not a lawyer and encouraging him to obtain legal advice before signing the document. The waiver also confirmed that the client understood the contents of the documents and signed them freely and voluntarily and requesting the member only to act as a witness to the signature.
4. The member had SC sign a similar waiver that also confirmed that the member did not prepare the document.
5. Upon execution of the waivers, the member agreed to witness execution of the Agreement and attest the Affidavit for RD and SC.
6. The member stamped the Agreement and the Affidavit with a pre-printed stamp saying "*No Advice sought or given, Attested to but not drawn by*" the member.

The T Matter:

7. In July 2006, the Member met with FMT who asked him to witness her signature on a form of Separation Agreement between herself and her husband “E”. FMT had the Separation Agreement with her.
8. The Separation Agreement deals with matters relating to, among other things, child custody, guardianship, access, child support, spousal support, property rights, ongoing obligations of debts and liabilities, life insurance, medical and dental insurance, and the family residence.
9. The member informed FMT that he could not give her legal advice with respect to the agreement and she acknowledged the information and told him that she did not require legal advice.
10. The member had FMT sign a form of legal advice waiver confirming that she brought the document to his office, the member did not prepare the document, the member told her he is not a lawyer and that she should obtain legal advice before signing the document, that she declined legal advice, that she understood the contents of the document and signed it freely and voluntarily, and that she asked the member to act only as a witness to her signature.
11. The member stamped the Agreement with the same pre-printed stamp used in the C matter.

Inquiry Hearing

The member did not attend the inquiry hearing on the understanding that the settlement agreement would be submitted on his behalf. In addition, the member submitted a written apology to the Society for his admitted breach of Rule 11.04.

Given the facts as agreed and in simply looking at the signing pages of the agreements, the panel agreed that the member breached Rule 11.04 which reads *“No Member shall engage in the practice of drafting marriage contracts or separation agreements, nor shall a member witness such documents as a notary.”*

The panel noted that it is difficult to appreciate how the Society could be clearer in stating its position that members are not to engage in assisting with these documents. They noted that the initial decision to avoid involvement in these transactions resulted from insurance issues, but notwithstanding those issues being resolved, the Society decided to continue to require its members to refrain from acting on family law agreements.

The panel was not convinced that the member's actions were a breach of Section 18 of the *Notaries Act*, however, since his breach of Rule 11.04 is a breach of Section 28(1) of the Act, the panel was not required to make a finding on that matter.

The panel believes this is an opportune time to remind members that acting as a witness is not the professional function of a notary. Members do so at their peril and one of the perils may well be a finding that they are acting in a manner that the Board will find is contrary to the best interests of the public or the notarial profession.

#### Penalty Recommendation

Since the member did not appear at the hearing, the panel went on to consider a recommendation on penalty to the Board, pursuant to S. 31 of the Act.

The member has no discipline history. His explanation for failing to comply with the Rule was that he hadn't reviewed it recently. Although he recalled the prohibition against drafting family law agreements, he did not recall that members are not to serve in any capacity regarding those agreements.

While not wanting to be seen to condone the member's failure to remain abreast of the Rules, the panel considered his diligence in ensuring that his clients were advised to get legal advice and that they understood they were not getting any such advice from him. In that regard, it is the panel's view that the member took steps to protect those individuals from entering into the agreement in a state of ignorance.

Taking into account the member's cooperation with admitting and resolving the complaint, his unblemished discipline record, the fact that his actions do not appear to have caused any loss or inconvenience to the public, and with the understanding that his proceeding will likely ensure the member will not be involved with family law agreements in future, the panel recommended the following penalty:

- a. A reprimand
- b. A fine of \$500
- c. Costs of \$300

#### The Board Hearing

The Board of Directors considered the Report of the Inquiry Panel and accepts the findings and recommended penalty.