

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Evans v. The Society of Notaries
Public of British Columbia,*
2010 BCSC 1232

Date: 20100901
Docket: S082853
Registry: Vancouver

Between:

John Michael L. Evans

Appellant

And:

The Society of Notaries Public of British Columbia

Respondent

Before: The Honourable Mr. Justice Savage

On appeal from the Board of Directors of the Society of Notaries
Public of British Columbia Decision dated March 17, 2008

Reasons for Judgment In Chambers

Counsel for the Appellant:

C. Herb-Kelly, Q.C.

Counsel for the Respondent:

T.A. McKendrick

Place and Date of Hearing:

Vancouver, B.C.
February 5, 2010
and July 16, 2010

Place and Date of Judgment:

Vancouver, B.C.
September 1, 2010

I. Introduction

[1] John Michael Evans (“Evans”) appeals the decision of the Board of Directors of the Society of Notaries Public of British Columbia (the “Notary Board”) pursuant to section 41 of the *Notaries Act*, R.S.B.C. 1996, c. 334 (“the Act”). The decision of the Notary Board dated March 17, 2008 (the “Decision”) found him in breach of the Rules of the Society and terminated his membership. Evans also says that the penalty of termination of his membership is unreasonable and excessive.

[2] In a nutshell, the Notary Board reviewed Evan’s history of membership in the society. Notarial seals are area specific. Evans operates a real estate office in Sechelt but gave his office address as a location in Vancouver, which is where he is authorized to practice as a notary. Despite an earlier disciplinary proceeding relating to a similar issue, the Notary Board found that Evans did not abide the earlier decision. The office address was an address of convenience, but not one where he practices as a notary public. The Notary Board concluded that Evans was ungovernable and terminated his membership.

[3] The amended Notice of Appeal sets forth the following as grounds of appeal:

1. The Discipline Committee of the Society of Notaries Public (the "Committee") and the Board of Directors of the Society of Notaries Public (the "Directors") lost jurisdiction by virtue of their failure to comply with the rules of procedural fairness and natural justice including but not limited to the following errors:
 - (a) the appellant was not given adequate notice of the allegations against him;
 - (b) the appellant was not given adequate opportunity to respond to the allegations against him;
 - (c) the appellant was not given adequate or any notice of prejudicial evidence presented to the Committee and Directors and accordingly was not given an opportunity to respond;
 - (d) the appellant was not given notice of the recommendation as to penalty made to the Directors by the Committee and accordingly did not have an opportunity to respond to the recommendation;

- (e) the Committee admitted into evidence and relied upon material that was irrelevant, highly prejudicial and inadmissible.
- 2. The Committee and Board took into account irrelevant matters that are outside the scope of the Notice of Inquiry in reaching their conclusions of fact;
- 3. The Committee and Directors reached conclusions of fact that are unsupported by the evidence before them;
- 4. The appellant has a reasonable apprehension of bias;
- 5. The penalty imposed by the Directors was harsh and excessive in the circumstances and failed to take into account all relevant issues before them;
- 6. Such further grounds as Counsel may advise.

[4] Evans obtained an order of Master Scarth dated February 6, 2009 that provided that “The appeal shall be a review of the record of proceedings before the Discipline Committee...and the Board of Directors ...including the exhibits filed therein”. This was not opposed and neither party called any other evidence at the hearing.

II. Appeal Provision

[5] Section 41 of the Act is the appeal provision:

- 41 (1) If it is alleged by a member or former member that the directors have erred in a disciplinary action taken against the person, an appeal lies to the court.
- (2) The member or former member must, within 14 days after the decision or order complained of, give written notice of the appeal to the directors.
- (3) The appeal is a new hearing and the member or former member and the directors or their respective counsel are entitled to appear, present evidence and be heard.
- (4) The court may affirm the decision or order and dismiss the appeal or make another order, as may seem just.

[6] As can be seen from the Amended Notice of Appeal, Evans very much takes issue with the procedures before the Board of Directors and Discipline Panel. Section 41 of the Act provides that an appeal to the court “is a new hearing”. This

would appear to invite the court to make its own decision based on the evidence presented before it.

[7] There are two decisions of this court which, despite this appeal provision, interpret the Act as imposing a reasonableness standard of review on appeal: *Re Farrell*, 2003 BCSC 1380 and *Bailey v. Society of Notaries Public (British Columbia)*, 2004 BCSC 444. Were the matter one of first impression a court might come to another conclusion. However, as neither party challenged the correctness of those decisions, I am content to deal with the matter on that basis: See *Re Hansard Spruce Mills*, [1953] B.C.J. No. 142 (S.C.).

[8] However, as noted by Pearlman J., in *Telus Communications Co. v. Telecommunications Workers Union*, 2009 BCSC 1289, the concept of judicial deference as it relates to administrative decisions has no application to procedural fairness.

[9] The court asks whether the process meets the requirements of procedural fairness and provides the legal answer to that question: *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, 2003 SCC 29, [2003] 1 S.C.R. 539 at para. 100. The standard of review is applied to the end product of the Tribunal deliberations.

III. Procedural Fairness

[10] With respect to the allegation of a lack of procedural fairness Evans itemizes a number of matters which he says gave rise to a lack of procedural fairness. There is some duplication in the items listed, and some of the matters raised in the written submissions were not pursued during oral argument.

[11] I summarize Evans allegations as being under these heads: (1) that he was not given proper notice of the case he had to meet; (2) evidence was heard of matters outside the period of time where his conduct was in issue; (3) that conclusions were reached on matters not clearly before the Board or Discipline Committee; (4) that the Board or Discipline Committee strayed outside the four

corners of the charges against Evans; (5) there was little or no deliberation between the hearing, conclusion, and penalty phase of the proceeding; and (6) the reasons for decision are deficient in that they do not set out in any meaningful way basis on which the Notary Board made its decision.

[12] Much of the argument addressed to each of these items is repeated in a slightly different form under each listed heading. Items (1)-(4) above are all different aspects relating to an alleged lack of notice.

A. Failure to give Notice

[13] The Notice of Inquiry given to Evans is as follows:

Between September 1, 2006 and April 27, 2007, you did:

1. Fail to maintain an office accessible to the public during reasonable business hours for the purpose of pursuing your notary profession;
2. Mislead the Society by reporting to the Executive Director/Secretary that you had relocated your practice and were conducting your practice at 5625 Toronto Road effective February 1, 2007 which was untrue.

Thereby breaching the following provisions of the Rules and Code of Ethics:

- (i) Rule 2.03 Every Member shall in the public interest actively and independently pursue the Member's profession and maintain an office accessible to the public during reasonable business hours;
- (ii) Code 13.5 Members should endeavor to conduct themselves at all times so as to reflect credit on the notarial profession and to inspire the confidence, respect and trust of both clients and the community;
- (iii) Code 5.6 Failure to maintain office staff and facilities adequate to the member's practice.

[14] The hearing was scheduled for November 14, 2007. Evans sought to have the hearing adjourned because he was going to Las Vegas. He wrote to the Board seeking an adjournment of the hearing but enclosed a copy of a Statement of Claim he said he was filing in the Supreme Court of British Columbia that day.

[15] The Statement of Claim raises matters that had arisen since 1995 with respect to his notarial practice. It also raised matters regarding his earlier disciplinary proceedings before the Notary Board. Paragraphs 1-8 of the Statement of Claim are as follows:

STATEMENT OF CLAIM

1. The Defendant was and is aware that the Plaintiff has resided in Sechelt, B.C. since 1957.
2. The Defendant advised the Plaintiff on or around December 1995 that the Plaintiff must open an office in the Plaintiff's notarial district of Vancouver within 1 year or the Plaintiff would lose his license to practice as a notary.
3. In an attempt to adhere to the Defendant's directive, the Plaintiff arranged office space at 21- 3787 West 4th Avenue, Vancouver, BC., a private residence owned by Laurence and Eileen Evans, the Plaintiff's parents, on or around December, 1996.
4. The Defendant visited the Plaintiff in the Plaintiff's Vancouver office in 1997.
5. The Plaintiff did not attend to the Plaintiff's notary office in Vancouver on a regular basis from December, 1996 to February of 2006.
6. From 1996 to on or around 2000 the Plaintiff made four (4) separate attempts to acquire a seal in the notarial districts of Sechelt and Gibsons, but was unsuccessful.
7. the Defendant was aware of the facts in (3.), (4.), (5.) and (6.).
8. The Defendant reprimanded the Plaintiff in 1997 for performing notary work outside of the Plaintiff's notarial district of Vancouver, in contravention of section 6(2) of the *Notaries Act*, thus preventing the Plaintiff from practicing as a notary from 1997 until the present date.

[16] The earlier disciplinary proceeding resulted in findings of an Inquiry Panel as follows:

BACKGROUND: Mr. Evans was installed as a Notary Public for the City of Vancouver on 7 December 1995, at which time he provided the required Candidate's Covenant, promising, *inter alia*, to "*commence to practice and to serve the public as an independent Notary within my Notarial District within one year from the date of my Commission.*" Mr. Evans advised the Secretariat in early 1996 that he had opened an office within his Notarial District, at Suite 210, 3787 West 4th Avenue, Vancouver. As a result of information received by the Secretary in mid-1996 and subsequently, a formal investigation was begun to determine if Mr. Evans was in fact practising within his Notarial District.

THE COMPLAINT: The Chair of the Discipline Committee reviewed the report of the Secretary, following his investigation, and determined that this matter ought to be reviewed by a formal Panel of Inquiry to determine if the member was or was not in breach of his Candidate's Covenant and/or the limiting sections of the *Notaries Act*.

EVIDENCE: The Panel reviewed the information provided by the Secretary, and heard evidence under oath from Mr. Evans, the only witness involved in the proceedings. The Panel heard that Mr. Evans' office in Vancouver was in fact a co-op apartment owned by his parents; that Mr. Evans did not have a business licence for this location; that Mr. Evans, whilst handling very few files in total since his commission as a Notary, has never seen a client in the Vancouver office; that Mr. Evans typically sees clients in their own home, often on the 'Sunshine Coast'. It was noted that less than one-half of Mr. Evans' files related to business within his Notarial District, although it was acknowledged by the Panel that this was perhaps moot.

THE FINDINGS: The Inquiry Panel found that Mr. Evans is in breach of his Candidate's Covenant, which is a breach of undertaking under the Rules of the Society, and a breach of Section 23(1)(c) of the *Notaries Act*. The Panel also found Mr. Evans in breach of Section 6(2) of the *Notaries Act* by actually practising outside of his Notarial District.

[17] To the extent that the Inquiry Panel and then the Notary Board considered matters outside the time frame mentioned in the original Notice, and previous disciplinary decisions, it was done so at the invitation of Evans who himself considered these matters germane to the issues raised in the Notice. In those circumstances the Inquiry Panel and Notary Board cannot be faulted for considering those events. There was no lack of procedural fairness in doing so.

[18] The Findings of the Inquiry Panel and its penalty recommendation are as follows:

Findings of the Inquiry

10. The Panel heard the evidence of the Society Secretary Wayne Braid, who described dealing with Mr. Evans in 2006. Mr. Braid described having a telephone call with Mr. Evans during which he described the Society's requirement that Mr. Evans have an office open to the public in Vancouver, which was the jurisdiction his practice was limited to.
11. Mr. Braid's evidence was that he initiated discussions with Mr. Evans because the Society heard from members of the public who had attempted to use Mr. Evans' services but were unable to locate his office. Mr. Evans admitted to Mr. Braid that he did not have an office open to the public and had not been offering notarial services in Vancouver.

12. Mr. Braid wrote to Mr. Evans asking for an address and eventually received a letter from Mr. Evans providing an address from which Mr. Evans indicated he would be able to serve his Vancouver clients.
13. Believing Mr. Evans then had an office in Vancouver, nothing further was done by the Society until an audit by the Society indicated that Mr. Evans seemed not to be providing any services in Vancouver. Noting that Mr. Evans had applied for another seal, which application was unsuccessful, Mr. Braid contacted Mr. Evans and suggested a number of other means by which he could practice using his seal, including for example sharing office space with another Vancouver notary. It is clear that Mr. Evans chose not to avail himself of any opportunities to practice in Vancouver.
14. Mr. Evans was listed, as are all notaries, on the Society's website as practicing at the office address provided to the Society by him. The Society eventually sent Mr. George Tanco to visit Mr. Evans' office to determine whether it was open to the public. Mr. Tanco's affidavit reveals that there was no office open.
15. Mr. Evans' Statement of Claim admits that he has not practiced as a notary in Vancouver though he denies having misled the Society as to the nature of how active his office was. Mr. Evans feels that the passage of time it has taken the Society to bring him to discipline ought to militate against a finding that he should be disciplined.
16. It is clear to the Panel that Mr. Evans did not have an office open to the public in Vancouver and on that basis was and is in breach of the Society's Rules. The Panel finds that Mr. Evans misled the Society by claiming that he had an office in circumstances where he knew, or ought reasonably to have known, what the Society's requirements are, and that he did so in order to keep his Vancouver seal despite not practicing.
17. The Panel acknowledged that the matter could have been dealt with more expeditiously by the Society, but is of the view that Mr. Evans cannot be heard to complain about the delay when it was in fact as a result of the Society's reliance on information provided to it by him that the Society misunderstood his activities.
18. The Panel was also of the view that Mr. Evans' information to the Society was intended to mislead the Society as to the nature of his operation in Vancouver. Providing misleading information to the Society is a much more serious matter than not having an office open to the public. Mr. Evans had many opportunities to correct the information he provided or to find a way to practice in Vancouver, yet he did not take advantage of them.
19. Giving Mr. Evans the benefit of the doubt however, the Panel is of the view that taken in context, his reporting to the Society may have been made without a clear understanding of how important complete disclosure was, and in that regard, though very close, the Panel felt that his conduct fell short of Professional Misconduct.

20. The Panel notes for the illumination of current practitioners that this type of delay in taking action would be very unlikely today in light of the Society's recent procedures for audits, practice inspections and follow up through discipline.

Penalty Recommendation

21. As the member did not appear at the hearing, after deciding the issue of liability the Panel went on to hear evidence regarding Mr. Evans' discipline history and to consider a recommendation on penalty to the Board, pursuant to s. 31 of the *Act*.
22. Mr. Evans has a discipline history, having been disciplined in 1997 for acting outside of his jurisdiction. The Panel notes that during the course of that proceeding, the question of his office location was raised and responded to by Mr. Evans indicating that he would open a Vancouver office.
23. The Panel has taken into account the fact that Mr. Evans has now held a seal for 12 years without practicing. Limited as the Society is in the range of penalty it can impose, the Panel is of the view that termination of Mr. Evans' membership is the most appropriate remedy in this unusual case.
24. A fine would have the effect of leaving Mr. Evans in the position he has been in for the previous 12 years and it is clear to the Panel that Mr. Evans has no interest in or intention of practicing in Vancouver, despite being given every opportunity and encouragement to do so. As there is no practice to suspend, Mr. Evans ought to be terminated.
25. It is clear that Mr. Evans will suffer no pecuniary loss as a result of termination, as he has not made his living as a notary public. We are also concerned that allowing Mr. Evans to retain his seal in these unusual circumstances would confuse not only the public, who have a right to expect notaries public to provide services in exchange for being granted a seal, but also the membership of the Society, who must recognize the need to either make use of their seal or make it available to another individual who is prepared to serve the public.
26. Under the circumstances of this case therefore, the Panel finds Mr. Evans to be in breach of the Rules of the Society and recommends that his membership in the Society be terminated, and that he pay the costs of these proceedings.

All of which is submitted this 10th day of December, 2007.

[19] At the commencement of proceedings before the Notary Board the Chair reported on the purpose of the proceeding as follows:

THE CHAIR: The purpose of the hearing today and of this committee is to review the inquiry panel report and to either accept that report or reject it or refer it again out for more information. And we will be hearing from the Society and from yourself as to these

matters and then we will ultimately decide if we're ready to proceed with the penalty portion of this. We will make that decision today.

So the charge itself, which you probably already have, but we'll read it anyway:

Mr. Evans has breached Rule 2.03 of the rules of the Society and failed to adhere to clauses 5.6 and 13(5) of the Code of Conduct by failing to maintain an office accessible to the public during reasonable business hours for the purpose of pursuing the notary profession and, further, that he misled the Society by reporting to the executive director secretary that he had relocated his practice and was conducting his practice at 5625 Toronto Road, Vancouver, B.C. effective February the 1st, 2007, which was untrue.

Now, would you -- would the Society like to present information at this point?

[20] Regarding whether he practiced at the Vancouver office address he gave, Evans gave the following evidence to the Notary Board:

Mr. Braid goes on to report that I admitted to him I did not have an office open to the public and that I had not been offering notary services in Vancouver. I deny making those remarks. I don't recall any such conversation and I surely cannot imagine sending the Society a note saying I've arranged office space and then telling the secretary, by the way, I haven't made any such arrangements.

Statement 13 goes on to say:

Mr. Evans chose not to avail himself of any opportunities to practise in Vancouver.

It's an interesting choice of words. It's interesting the concept of choice has come up here because there is no choice at all involved with this. I live in Sechelt. It takes hours a day to commute to Vancouver and back again. It was not going to be in any way practical or reasonable to strike up with some other notary in order to do notary work that way in Vancouver.

The so-called choice was no choice at all. It was more like an ultimatum to agree to some arrangement that I couldn't possibly live up to. The only real choice I had, if there even was one, was to carry on the way I had for those previous 12 years. It was the only reasonable thing I could do given my circumstances.

I now move to number 16 where it states I've misled the Society by claiming I had an office when I ought to have known what the Society's requirements were and that I did so in order to keep my seal despite not

practising. I have covered off extensively why I feel I did not mislead anybody. I have covered off extensively I do have a practice.

At 18 the statement says my information was to mislead. This is similar to 16. I have already given the panel many reasons to at least give me the benefit of the doubt there was no intent to mislead.

And, again, as to the so—called opportunities to find a way to practise in Vancouver, I do not want a storefront operation business from passers-by. I do not want to commute to Vancouver four or five days a week. I was comfortable doing what I was doing, how I was doing it and where I was doing it and it should, and it is, my basic human right to perform as I wish as long as I do not harm the public or my profession.

[21] The decision of the Notary Board was as follows:

6. Mr Evans filed a binder of submissions after reading them to the directors. His position regarding the allegations in the Notice of Inquiry followed five themes:
 - a. Mr. Evans did not attend the hearing of the discipline committee because he had a flight booked to Las Vegas the following day and he could not both attend the hearing and make that flight;
 - b. Mr. Evans has been practicing as a notary public in the course of owning and operating his real estate office in Sechelt;
 - c. The limitation on notaries' ability to practice outside of a specific jurisdiction in s. 6(2) of the *Notaries Act* is unfair and possibly unconstitutional;
 - d. It is unfair to force Mr. Evans to operate a practice in Vancouver and to discipline him for not doing so, given the vague description of "office" provided by the Society of Notaries Public; and
 - e. Mr. Evans' discipline matter should be adjourned until the provincial government deals with its contemplated changes to the *Notaries Act* to provide increased mobility of notaries.

Decision of the Directors

7. For the reasons that follow, the directors accept the discipline inquiry panel's findings that Mr. Evans has breached and remains in breach of the Society's Rules by not having an office open to the public in his jurisdiction. We also agree that Mr. Evans misled the Society by claiming that he had an office in Vancouver. We are of the view however, unlike the inquiry panel, that Mr. Evans' misleading the Society constitutes professional misconduct.
8. With respect to Mr. Evans' office, his own information to the directors was that as a result of his being previously disciplined for not operating an office in Vancouver open to the public, he wrote to the Society and indicated that he would shortly thereafter open an office.

Mr. Evans told the directors that he found the description of what was required of an office vague and arbitrary. However, Mr. Evans also described that in the years following his discipline proceeding and despite being made aware that the office he had was not acceptable, he has to this day maintained an “office” exactly like the one he was disciplined for having. Even if the directors were inclined to agree that Mr. Evans was not given every opportunity to understand what the Society required of him to operate an office in Vancouver, which we are not, certainly he understood that operating his Vancouver office exactly like the one he was disciplined for was not acceptable.

9. Mr. Evans wrote to the Society after his discipline proceeding and stated that he would do “whatever it took” to bring his office into compliance and then attended this hearing and claimed that the only reasonable course of action for him was to do nothing to change his operation. In the directors’ view, that is not acceptable behaviour from a member of the Society of Notaries Public. Notaries are engaged in a profession that takes its commitments and promises very seriously. Following through on promises is a notary’s stock in trade.
10. The directors were no less troubled by the fact that Mr. Evans argued his activities in Sechelt; performing legal services as an adjunct of his real estate practice and using his designation as a notary public as a means to attract realtors and clients, revealed a deeply flawed understanding of the powers accorded to notaries by the *Notaries Act* and the need to practice in conformance with the *Act*. Mr. Evans’ lack of understanding is all the more troubling because as the directors heard from him; he had also been previously disciplined for practicing outside of his jurisdiction.
11. Mr. Evans described his practice as a notary as involving certifying copies in Sechelt, preparing contracts including drafting shareholder agreements and giving advice to sales staff in his realty office regarding contracts. Not only is it clear to the directors that Mr. Evans is practicing as a notary outside of his jurisdiction, but it also appears that under the guise of acting as a notary, Mr. Evans likely is performing legal services that he is not authorized or qualified to do.
12. In response to questions from the directors as to whether Mr. Evans availed himself of any educational opportunities to keep his skills as a notary up, he described his only ongoing professional development as being limited to the real estate sales field. Mr. Evans was of the view that he only practiced as a notary in those areas “he felt comfortable in”. Mr. Evans’ view, of course, begs the question as to how he can feel comfortable in an area if he has no exposure to the changing face of practice as a notary. It is the directors’ view that the public and our profession have a right to expect more from members of the Society of Notaries Public.
13. It is apparent to the directors that Mr. Evans is interested in his notarial designation not as a way to provide competent notarial services to the public, but as an adjunct and a way to promote and enhance his realty office.

14. Mr. Evans' response to his previous discipline proceedings gives the directors to believe that he is incapable of being governed by the Society. The directors are strengthened in that belief by Mr. Evans' submissions that he has been left with no alternative but to carry on with the façade of operating a Vancouver office and practicing in Sechelt because of the oppressive nature of the *Notaries Act*.
15. While it may be the case that there is a place for civil disobedience in society, the directors cannot agree that Mr. Evans' actions can in any way be justified. Mr. Evans pleaded with the directors to change the provisions regarding jurisdiction of notaries' seals and argued vehemently that they were tantamount to restraint of trade. Mr. Evans' views are not unknown to the directors, but unless or until the Legislature sees its way to amend the *Act*, notaries are bound to follow the *Act's* provisions. There is no place in our Society for members who are prepared to pick and choose which laws they will follow in operating their practices.
16. With respect to Mr. Evans' suggestion that this proceeding await the provincial government's decision on the *Notaries Act*, the directors note that the government's process in that regard is only at the consultation stage, and there is no indication when any amendment may take place or what it would be. More importantly, however, is the fact that this discipline proceeding is not about operating outside of one's jurisdiction as much as it is about being forthright, conscientious and governable. The directors are of the view that Mr. Evans has revealed himself to be lacking in those qualities insofar as they are necessary for effective oversight by our Society.

[22] In my opinion the question of whether Evans was in fact maintaining and practicing as a notary out of a Vancouver Office was the essence of the issue raised by the Notice of Inquiry. To the extent that the Inquiry Panel and Notary Board reviewed the earlier disciplinary proceeding and Evan's practice over the intervening years it did so upon Evans raising this matter as germane to the issue himself.

[23] In my opinion there was no lack of procedural fairness in doing so.

B. Straying Outside the Notice of Inquiry

[24] It is argued that the Notary Board strayed outside the four corners of the Notice of Inquiry. By this is meant that the Notary Board considered earlier events related to an earlier Notice of Inquiry. Evans however, himself raised these matters in his response to the Notice of Inquiry and through his Statement of Claim which he referred to the Inquiry Panel. The Notary Board did not therefore stray outside of the

four corners of the disciplinary Notice in addressing matters that Evans himself raised.

C. No Deliberation between Penalty and Determination Phases

[25] Although this was not emphasized in argument, it is apparent that before the Notary Board all of the parties dealt with both the issues on the merits and the appropriate penalty. In part that is because proceedings before the Notary Board follow upon findings of the Inquiry Panel. As noted above, the Inquiry Panel makes both findings and a penalty recommendation.

[26] In my view, in circumstances where both findings and a penalty recommendation are matters before the Notary Board it is appropriate that submissions relate to both and the Notary Board deal with both matters. This is not a case where, for example, the parties asked that a separate hearing deal with the question of penalty, so that phase is considered by a further proceeding.

[27] In these circumstances I can see no procedural flaw in the Notary Panel dealing with both the question of the Inquiry Panel findings and the penalty phase of the proceedings.

D. Deficiency of Reasons

[28] Evans says that neither the Inquiry Panel nor the Notary Board decisions set out in a meaningful way the evidence supporting their conclusions, the statutory provisions relied upon, or an analysis of their reasoning, all of which is fatal: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Sharman v. British Columbia Veterinary Medical Association*, 2008 BCSC 240; *Telus Communications Company v. Telus Communications Union* 2009BCSC 1289.

[29] Evans says that the reasons are so deficient that it is impossible to know what evidence was relied upon by either the Inquiry Panel or Notary Board to support its conclusions. Thus the “Society failed to discharge its burden and meet the standard of proof required in a case of this kind, namely, that the evidence ‘*must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test*’.

[30] With respect, I do not view the reasons and the evidence as failing to meet this test. The Inquiry Panel (the "Panel") and the Board reached conclusions based on evidence some of which was provided by the Appellant himself. The Respondent provided this summary which I think fair:

- (a) The Appellant gave evidence that as a result of his being previously disciplined in 1997 for not operating an office in Vancouver open to the public, he wrote to the Society and indicated that he would shortly thereafter open an office.
- (b) The Appellant gave evidence that in the years following his discipline proceeding in 1997, and despite being made aware that the office he had was not acceptable, he continued to maintain an "office" exactly like the one he was disciplined for having.
- (c) The Appellant admitted that he understood that operating his Vancouver office exactly like the one he was disciplined for was not acceptable.
- (d) The Appellant's evidence was that he wrote to the Executive Director/Secretary of the Society in January 2007, indicating that he had obtained a Vancouver office and that he anticipated being able to offer service to his clients in Vancouver before the end of the month, which was untrue. The Appellant misled the Society in order to keep his Vancouver seal despite not practicing in that notarial district.

[31] The reasons of the Notary Board provide an adequate line of analysis from which the Board's conclusions can be reasonably supported. The Notary Board took the view that notaries are engaged in a profession governed by rules that must be abided by. Despite advising the Society that he would open a Vancouver office shortly after his 1997 discipline proceeding, the Appellant continued to operate in the same manner for some years.

[32] In essence, the Notary Board found that the Appellant misled the Society, the governing body of the profession, regarding his Vancouver office. From this the Notary Board concluded that the Appellant could not be trusted to follow through with his commitments and promises, which led to the decision to terminate his membership in the Society.

[33] Viewed as a whole, I cannot say that the conclusion of the Notary Board was unreasonable. It is true that the Appellant took the view that the Rule imposing a territorial restriction on notarial practitioners was not justified and that has since changed. But that was not the issue before the Notary Board. The issue before the Notary Board was the Appellant's conduct during the period of time when the territorial restriction was in place, and the Appellant's conduct in the face of that restriction. I do not think that the fact that a professional organization changes a rule of practice excuses knowingly failing to abide the rule while it is in place.

[34] That said, I do not interpret the reasons of the Notary Board as precluding the Appellant from reapplying for admission to the society in the future.

[35] The appeal is dismissed.

"The Honourable Mr. Justice Savage"