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## DISCIPLINE DIGEST

The Society of Notaries Public of British Columbia

December 2015

Timothy Janzen  
Commissioned: December 1990

Hearing Date: July 21, 2014  
Panel: Jessie Vaid (chair), Linda Manning, Tammy Morin Nakashima, Filip de Sagher, Daryl McLane  
For the Society of Notaries Public: Marny Morin  
For the Member: In Person

### Background

1. This was a review by the directors pursuant to sections 34 and 35 of the *Notaries Act* of the report of the inquiry 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.
2. The inquiry into this matter was conducted May 27, 2014. The member attended at that time and admitted the complaint against him. The Notice of Inquiry was dated May 8, 2014. The inquiry panel report dated June 20, 2014 was reviewed by the Directors.
3. 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

4. The Notice of Inquiry received by the member alleged the following:

*That in your capacity as Executor of the Estate of JMC (the "C Estate"), you breached Section 28(1)(c) of the Notaries Act by:*

- a. Failing to report to the beneficiaries as promised and as required;*
- b. Failing to keep the beneficiaries reasonably informed;*
- c. Failing to answer reasonable requests for information;*
- d. Informing the beneficiaries that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;*
- e. Informing the Society of Notaries Public that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation.*

*All of which is contrary to Principle 4 of the Society's Principles for Ethical & Professional Conduct.*

### **Member's history**

5. The member has been a member since 1990. His practice is in Kelowna.

### **The Facts**

6. The Inquiry Panel Report described the member's admission of the complaint against him. On that basis that panel found the complaint to be made out. At this hearing the member confirmed he was aware of his right to counsel and chose not to be represented, took no issue with the jurisdiction of the Board or composition of the panel at this hearing and admitted the allegations in the complaint.

7. For the purpose of this decision, some brief summary of the facts is helpful.

8. The activity at issue arose out of the member's first foray into acting as an executor of an estate. His services for the estate began in 2005. Problems began to arise in or about October of 2007. At that time the beneficiaries began complaining to the Society of Notaries Public that the member was not responding to their appeals for status reports and completion of the estate matters.

9. The estate was not large. By the time the complaints began all but approximately \$32,000 of the estate had been distributed. In July of 2010, the Society asked the member to respond to the beneficiaries' complaints. His failure to respond in a timely manner led to his being disciplined in June of 2011.

10. Since that time little appeared to have been done to wind up the estate. Complaints from the beneficiaries returned in January, 2014. In the interim, the beneficiaries complained that they had attempted to prompt some action on the member's part through correspondence and on one occasion an in person meeting with the member.

11. The beneficiaries reported that they sought legal advice on how to deal with the member as they had concerns that funds may have been lost, but the high cost of legal services made pursuit of that remedy uneconomical.

12. The Board reviewed the complaint from the beneficiaries and subsequent correspondence and the Society's requests for information and the member's responses.

13. The Inquiry Panel reported that when the member appeared before it he explained that he was seeking guidance as to how to conclude the estate matter and restore his communication with the beneficiaries which the Panel concluded had clearly broken down.

14. The Inquiry Panel found that the matter had languished for an inordinate time and led the member to fail in his duties to the Society and its membership. That panel provided the requested guidance by recommending that the member follow up immediately and forward to the beneficiaries a closing package for the estate which they were led to believe was largely prepared. The Panel went on to say that updating the Society on the member's progress would assist in making any further proceedings smoother.

15. Despite the Inquiry Panel's guidance, at the time of this hearing the member had provided no further update and on attending at the hearing informed the Board that he had sent the closing package to the beneficiaries the Friday before this Monday hearing, almost two months later. No copy of the package sent or correspondence was provided to the Board.

16. In explaining his conduct the member stated that his administrative duties with his notary practice have kept him so busy that he finds it difficult to attend to the small number of ongoing files he has. The member asked the Board to consider his responsibility to his notary practice as a mitigating factor in this matter.

17. As previously stated the member then admitted that his conduct is contrary to Principle 4 of the Society's *Principles for Ethical & Professional Conduct*.

### **Decision**

18. Having reviewed the facts and taking into consideration the member's admissions, the Board is satisfied that the allegations from the Notice of Hearing that are admitted are made out. The Board accepts the findings and determination of facts from the Inquiry, and finds the member to be in breach as alleged in the complaint and that the member's conduct constitutes professional misconduct.

19. The fact of the member's earlier disciplinary hearing with respect to this estate cannot be ignored by the Board in this hearing. While the earlier proceeding dealt with the member's failure to respond to the Society, it should have been clear to the member and certainly was to the Board that by failing to deal with the estate even after being disciplined the member transformed what may have at one time been a personal issue; dealing with the beneficiaries as an executor, into a matter of more general interest to the Society and the public.

20. The Board is of the view that both members and the public would reasonably and should reasonably expect that notaries public once disciplined with respect to their conduct in a particular matter would thereafter make a concerted attempt to either resolve the underlying issue or find someone else to do it. This member clearly did neither. The beneficiaries were left with nowhere to turn for a remedy and in the Board's opinion rightly complained to the Society.

21. Even had the matter of this estate not taken on what we have characterized as greater importance owing to the previous disciplinary proceeding, in this matter it is still clear that the member was not diligent in responding to the Society's requests for information particularly insofar as completing the estate was concerned. On that basis alone, the Board would have found the member to have been in breach of the Rules and guilty of professional misconduct as his actions represent a marked departure from the Board's conception of normal and expected conduct of a member.

### **Penalty**

22. After informing the member of its finding on liability, the Board heard and considered submissions on penalty.

23. The member asked the Board to consider the effect a suspension would have on other notaries in, and clients of, the member's practice.

24. The Society sought a suspension of one month, largely owing to the fact that this is the second time this member is being disciplined for failure to communicate effectively, and cited as an aggravating circumstance the fact that this is the same underlying matter as gave rise to the previous disciplinary finding.

25. The Board is understandably concerned with the member's conduct and in particular his ability to function effectively in his present environment. For that reason, the Board is of the view that a suspension is appropriate.

26. At the time of his last discipline matter it was stated that the member's actions were deemed anomalous. Unfortunately that can no longer be said to be the case. The member was previously fined \$1,000. In the Board's view the penalty did not serve to motivate the member and in order to send a clear message both to this member, other members and the public that continued failure to ameliorate behaviour for which a member is disciplined will lead to a more severe penalty, the Board feels it is appropriate to increase the fine substantially.

27. The Board orders as follows:

- a. The member be reprimanded;
- b. The member be suspended for a period of 30 days; the dates of suspension to be determined by the Society;
- c. The member pay a fine of \$5,000
- d. The member pay the costs of the proceeding.

*The Member appealed the Decision of the Board of Directors herein. The appeal was heard on November 4, 2015 before Mr. Justice Robert J. Sewell. Justice Sewell gave his oral decision on December 2, 2015. The Member's appeal was dismissed.*

*The Member's suspension will be served in the New Year. Members will be informed of the date of the suspension in accordance with the Notaries Act and Society policy.*