

Society of Notaries Public of British Columbia

Taxation Committee

Reasons for Decision

Date: January 6, 2021

Committee members: Jessie Vaid - President; David Watts - Chair, Finance
Committee; Hassan el Masri - Chair, Discipline Committee

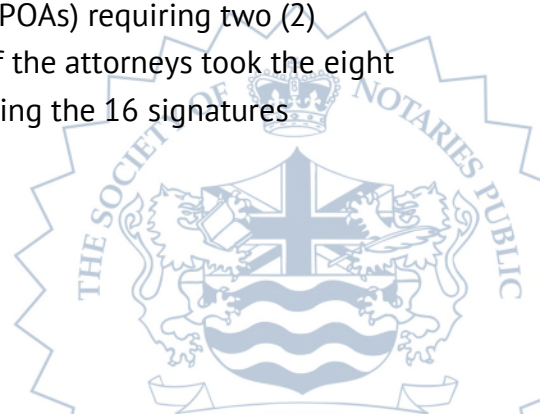
John Mayr - Executive Director, SNPBC

The Taxation Committee is a committee of the Society of Notaries Public of BC Bylaws. Section 8.17 establishes the composition of the committee and provides for the committee to investigate complaints of excessive notarial fees charged by members.

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{Complainant – Redacted }
{Notary Public – Redacted }
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Complaint received

The Office received a complaint regarding an allegation of excessive fees charged by a member. The complainant had prepared eight (8) documents (POAs) requiring two (2) signatures appointing their three children as attorneys. One of the attorneys took the eight documents to a Notary who charged a total of \$68 for witnessing the 16 signatures



on the eight documents. One of the other attorneys attended to a different notary office and was charged \$571.43 (plus GST) for witnessing the same set of documents¹.

The complainant, who is not the client who attended the office of the notary, complains that the fees charged by the second notary are unreasonable and requests taxation of the charge.

Analysis

The first step in any consideration of the complaint starts with an understanding of the terms. The bylaws and mandate of the committee say that the committee shall investigate the charging of “excessive” notarial fees.

Black’s Law Dictionary defines “excessive” as:

Greater than what is usual or proper; over much; a general term for what goes beyond just measure or amount.

The Principles for Ethical & Professional Conduct Guidelines also include specific information about fees and, in part, say the following:

8. Fees and Disbursements

8-P2 A Member should not ask for, negotiate, charge, or accept any fee that is not fully disclosed, fair, and reasonable including any justifiable disbursements.

Commentary

8.1 A Member is entitled to reasonable compensation for services. The Member should, however, avoid charges which either over-estimate or under-value services rendered. The client's ability to pay cannot justify a charge in excess of the value of the

¹ There is no evidence or indication of the charges incurred by the third child.

service, though circumstances may suggest that a lesser charge or even none at all is warranted.

- 8.2 A Member should avoid controversies with client regarding compensation. Fees should always be readily justifiable as fair and reasonable for services rendered. A Member should take care to ensure that no client suffers any financial loss or is put to any trouble or inconvenience as a result of careless or incompetent work on the part of the Member.
- 8.3 A fair and reasonable fee will depend upon and reflect such factors as:
- a. the time and effort required and spent;
 - b. the difficulty and importance of the matter;
 - c. whether special skill or service has been required and provided.
 - d. the customary charges of other Members of equal standing in the locality in like matters and circumstance;
 - e. the amount involved or the value of the subject matter;
 - f. other special circumstances such as loss of other employment and urgency;
 - g. any relevant agreement between the Member and the client.

The Principles are guidelines to practice and as such have limited use in regulatory administrative proceedings. The limitation in the guidelines originates in the use of the term “should”. The commentary adds substance to expand on what “should” means in a particular context.

The Principle 8-P2 establishes three contextual aspects to the consideration of a fee regardless of whether it is negotiated, charged, or accepted. The contextual aspects are:

- fully disclosed,
- fair, and
- reasonable.

With the test for the committee being that the fee must meet all three by virtue of the “and” provision.

The commentary is useful as it speaks to both “overestimate” and “undervalue” the services rendered.

The second section of the commentary speaks to the second and third contextual aspects.

The questions for the Committee to consider are:

1. Did the Notary subject to taxation charge an excessive fee for the service provided?
2. Was the complaint driven by the fee the other notary provided?
3. Did the notary who charged the lower fee violate Principles for Ethical & Professional Conduct Guidelines?

Competitions Act

As a statutory regulator, the Society of Notaries Public can not and must not be seen to be enforcing or establishing a fee for any particular service. It has been long held that price fixing violates the federal laws on competition and that such practices are detrimental to the market. The Society accepts the principles of competition and must therefore consider the matter from a broad perspective.

The framework of the Principles for Ethical and Professional Conduct originates from a time at which the Society of Notaries Public acted as both the professional advocacy organization and disciplinary body. The Notaries Act also contains provisions which, in current times, are considered ill-advised for a regulatory body. With the creation of the BC Notaries Association, an advocacy organization, the Society can and must focus on those provisions of the Notaries Act that represent sound administrative law practices.

Findings

After considering all the information in the file, whether it is specifically referenced in these reasons or not, the committee finds that the notary subject of the taxation:

- a. Fully disclosed to the client her regular fee and then discounted that fee based on the volume of documents. A valid contract for services was established with her client.
- b. Explained to the client the costs and provided options with respect to the costs related to signing of the original documents.
- c. That the provision of legal service has with it the potential of exposure to civil or other actions that may arise from the use of the documents.

The committee finds, on the basis of the evidence in the file, that the fees charged by the Notary subject to taxation did not meet the standard for excessive and were in fact within the realm of reasonable, “proper” and “usual.” Further, that the fee charged by the other Notary is not a valid basis for taxation as the \$68 fee charged for witnessing 16 signatures is unusual.

Based on the findings, no order is made against the Notary subject to the taxation request.



John Mayr – Executive Director

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