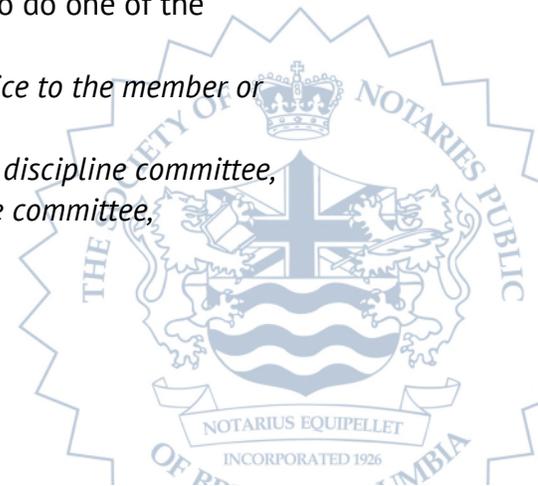


### Director's consideration of Report of the Discipline Committee

Director's Panel: Lilian Cazacu, Janice Rutherford, David Watts (Chair)  
For the Society: John Mayr Executive Director  
For the Member: (Redacted)

Hearing Date: May 18, 2021

1. The panel was convened under section 34 of the Notaries Act for the purpose of receiving a report from the discipline committee.
2. The panel was appointed by the president of the Society of Notaries Public of BC as is provided for by the Bylaws of the SNPBC.
3. In addition to the members of the panel, the member who was the subject of the inquiry attended the Hearing,
4. The Hearing was conducted via electronic means.
5. The Panel received the reasons for decision from the Discipline Committee dated January 18, 2021.
6. The Executive Director confirmed that reasonable notice of the Hearing had been provided to the member.
7. The Notaries Act in Section 34 provides for the Panel to do one of the following:
  - (1) *On receipt of the report and on giving reasonable notice to the member or former member, the directors may*
    - a. *Accept and adopt a finding of fact reported by the discipline committee,*
    - b. *Review the proceedings and evidence taken by the committee,*



- c. Hear further evidence, and may make further findings of fact on the evidence, or*
- d. Refer the matter to the committee for further inquiry as to the whole or a specific part of it, in which case the provisions of section 29 apply.*

8. The Notaries Act in Section 35 provides for the Panel to do f the following:

*(1) On the conclusion of the inquiry the directors must decide whether or not the member or former member*

*(a) has committed any of the infractions which may be inquired into under section 28 (1), or*

*(b) engaged in conduct that in the opinion of the directors, is contrary to the best interests of the public or the notarial profession or tends to harm the standing of the notarial profession.*

*(2) By resolution passed by a majority of the directors present, the directors may*

*(a) if they decide that a member or former member has not committed any of those infractions or engaged in that conduct, exonerate the member or former member and dismiss the complaint,*

*(b) if they find that a member has committed any of those infractions or engaged in that conduct,*

*(i) reprimand the member and, in addition, fine the member an amount of not more than \$5 000,*

*(ii) suspend the member for the period and subject to the conditions of practice they think fit and, in addition, fine the member an amount of not more than \$5 000, or*

*(iii) order that the membership of the member be terminated, or*

*(c) if they find that a former member has committed any of those infractions or engaged in that conduct, fine the former member an amount of not more than \$5 000.*

*(2) In any case, the directors may impose costs and set the amount of costs.*

9. Having reviewed the Reasons for Decision and having heard from the Member, the panel agreed to accept and adopt the findings of fact as reported by the Discipline Committee.

10. The Discipline Committee recommended that the directors act pursuant to section 35(2)(a) of the Notaries Act and, by resolution, agree that the Notary had not committed any of those infractions or engaged in that conduct and therefore exonerates the member and dismiss the complaint.

11. The Directors considered and adopted the following resolution:

BE IT RESOLVED that the directors, having received the report of the Discipline Committee agree that the member has not committed any of those infractions or engaged in that conduct and therefore exonerate the member and dismiss the complaint.

Carried

Dated July 28, 2021

## **Discipline Committee**

### Reasons for Decision

This document is a report of the Discipline Committee  
pursuant to section 33 of the Notaries Act

Dated: January 18, 2021

Complainant – REDACTED (Client)  
Represented by REDACTED (Counsel)  
Notary – REDACTED (Notary)  
Date of Alleged offenses – February 01/2020

### Characters involved

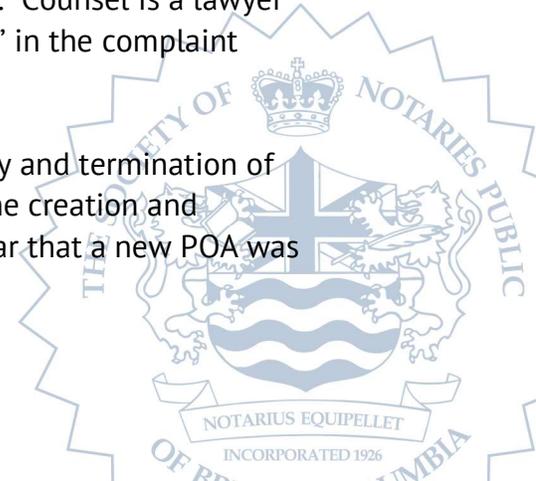
“Client” is a non-English speaking person.  
“Notary” speaks the same language as the Client.  
“Person A” – was the attorney in 2019 subsequently replaced by “Person B”  
“Person B” - Was appointed as attorney after the revocation of “Person A”  
“Person C” – Manager of the Church

### Background

The office received two submissions from Counsel dated Feb 12, 2020 and Feb 13, 2020. Both submissions are in relation to a service provided by the Notary on or about the date of the alleged offenses.

The Client is an elderly person who is represented by Counsel. Counsel is a lawyer (called to the Bar in B.C.) and refers to the client as “my client” in the complaint submission.

This complaint involves the termination of a power of attorney and termination of solicitor client relationship. It is alleged that there was also the creation and signing of a new power of attorney although it does not appear that a new POA was



provided or signed. There are diverging positions taken by Counsel and the Notary with respect to the events.

### Chain of events

It was in February 2019 when the Notary first became involved with Client and other persons. This involvement pre-dated the later events that led to the complaint.

According to the submission of the Notary, the initial contact was a phone call on February 20th, 2019 from a Cuban citizen asking whether the Notary could make a new Power of Attorney for an adult. The Notary inquired as to the relationship of the caller to the adult and was told by the caller that they were a friend of the adult. The adult is the same person as the Client.

The Notary's notes reflect that the caller expressed urgency to have the Client's Power of Attorney revoked and to make a new Power of Attorney appointing the caller as the new attorney.

The Notary advised the caller that he could not accommodate the caller and the Client on that day but could see them the next day on February 21, 2019. The Notary advised the caller that he would have to meet alone with the Client for not less 30 minutes before anything could be done. The notes reflect that the caller was advised that they would have to wait in the reception area during the interview.

The next day, the caller attended the office with three other individuals; a woman, a man, and the Client. Despite the clear communication from the Notary about having to interview the Client in private, the other individuals attempted to enter the interview room. After a discussion, the others left the office and remained in the reception area.

The Notary conducted the interview with the Client in the office alone. The notary advised the Client of the implications of a power of attorney and asked him whether he wanted to make a new one. The notes reflect that the Client replied in the affirmative but based on the way he spoke and his body language, he looked vulnerable and unsure.

The Notary's submission reflects that there was an issue with the Client's identification and there were sufficient concerns with respect to the situation that the Notary advised that he would not draft a new power of attorney and would only do so in the event that the Client could produce valid identification and when the Notary was satisfied that there was no undue influence.

#### Events leading to the complaint

On January 31, 2020, Person A (who was a previous attorney under a POA) contacted the Notary to request services be provided to the individual referred to in this document as the Client. The Person A reported to the Notary that the Client was being taken advantage of financially by the current attorney and that there was undue influence. She advised that she had contacted the Public Guardian and Trustee. It is indicated in the Notary's contemporaneous notes that the Person A had spoken to the Client and that the Client agreed and now wanted to revoke the Power of Attorney.

After the contact on January 31, 2020, the Person A called the office of the Notary on February 5, 6, 7, 8 and 9<sup>th</sup>, 2020 all with the intent of setting up an appointment for the Client to cancel the POA.

The Notary's submission includes details of the calls including that the Person A had advised the Public Guardian and Trustee of the alleged abuse. The notes also indicate that Person A had confirmed with the Client that he wanted to revoke the Power of Attorney and cease his relationship with his lawyer (Counsel) as it was Counsel who had created the POA that revoked the Person A as attorney and appointed Person B as the attorney and who was now alleged to be abusing the Client.

The Notary prepared the revocation document along with three letters to be sent to  
The Person B named as attorney,  
The Client's lawyer (who is referred to as Counsel in this document),  
The Client's bank.

On February 9, 2020, out of concern for the Client given the allegation of abuse, the Notary attended the Client's place of residence to provide service. The Notary arranged the appointment through Person A as it was "impossible to contact the Client directly". It is not clear from the notes as to what made it "impossible" or the extent of the efforts, if any, made by the Notary to make direct contact.

Again, the Notary made clear that he would have to meet with the Client separately and privately. In advance of the appointment, the Notary asked Person A to confirm with the Client what his wishes were. He advised Person A, that should there be any reticence that he would not proceed with the signing of the revocation or the appointment of a new attorney.

At the appointed time, the Client was not home. Person A had to contact Person B who had taken the Client to another place. Also waiting was the Person C and a neighbour of the Client.

The Notary's notes indicate that once the Notary was finally able to gain access to the Client's residence, he noticed that it was dirty and untidy. The submission reflects that the notary "...was under the impression that the Client was not being treated with care by whomever was taking care of him". That individual was allegedly Person B.

The submission reflects that Person A spoke with the Client to explain that the Notary was there to revoke the POA and for her to return to the Client his identification. The Notary viewed valid identification of and obtained copies of the identification for Person A and for the Client.

The Notary then had everyone leave the residence except for Person C who remained for the purpose of facilitator and translator. The Notary proceeded with the interview and confirmed with the Client his wishes. Those wishes were consistent with what had been communicated to the Notary by Person A. In his submission, the Notary indicated "It was very important to me that he understood everything, so I talked to him directly and asked him if he wanted to revoke the POA. The Adult said that he wanted to revoke the POA, so I asked him again and he confirmed in a way that did not show any doubt regarding his intent."

The Notary then asked Person C to leave the room and further interviewed the Client. He repeated the process of explaining and the revocation. The Notary had three letters written in the Client's native language and according to the Notary he asked the Client three times each in English and Client's native language whether he understood and agreed to revoke the Power of Attorney.

The submission reflects that:

The Client "...confirmed all 3 times that he did, not showing any hesitation or confusion at all."

With respect to the capacity of the Client, the Notary indicates that "His mental capacity was good, he was able to answer all questions very fast and did not have to think for long when answering my questions."

The Client then viewed and signed the 3 letters while alone and in the presence of the Notary.

The Notary indicates that the Client then signed a cheque for the payment of legal fees. Counsel disputes this and suggests that it was person A who paid. It should be noted that the cheque was dishonoured as a stop payment had been issued.

The Notary returned to his office with the three signed letters. He mailed the original back to the Client and sent for delivery the others to Person B, Counsel, and the Client's bank.

The Notary affirms in his submission that he acted in the best interest of the Client given the allegations and his personal observations of mistreatment. Further, on February 13, 2020 the Notary contacted the Public Guardian and Trustee to report the situation.

The contemporaneous file notes are consistent with the submission and include copies of the letter in both English and Client's native language.

## Counsel's Complaint

Counsel filed a formal complaint against the Notary identifying breaches of the Principles of Ethical and Professional Conduct of BC Notaries. The following has had names and identifying information redacted or for consistency the identifiers used elsewhere in this document have been used. All modifications are denoted by “< >” brackets.

The letter of complaint sets out the following:

*On Sunday, February 9 in the late evening, the notary <redacted> attended the address of one of my clients, <redacted>, a 93-year-old man, to unlawfully revoke a power of attorney under the instructions and payment of someone else, a woman <identified in this document as Person A>.*

*This woman used to be an attorney of the victim, <redacted> from 2017 to 2019 and her powers were revoked in March of 2019 as per the instructions of <the Client>. I am the lawyer who revoked the power of attorney that <person A> had. The basis of the revocation besides the wishes of my client, was elder abuse, misappropriation of funds and retention of government IDs.*

*The police are aware of the unlawful actions of this woman <police report #> and the public guardian and trustee as well <CASE #>. Vancouver Coastal Health is also aware of the issue. Scotiabank is another institution involved and where the funds of my client are kept.*

*<Person A> was instructed by the police and Vancouver coastal health to return the passports and government IDs of <the Client> that she had kept for a year after her powers were revoked. It was until last week that she agreed to return the passports and ID. All the authorities mentioned acted as per my request.*

*On Sunday, February 9, 2020, <The Client> was informed that this woman <Person A>, wanted to see him in his address to return his ID's. <The Client> was with a friend, named <referred to as person B>. <Person B> allowed <Person A> and the notary <redacted> to enter his premises, under the impression that <the Client> was meeting them to finally receive his Id's and to sign a document stating that he had received the passports and government IDs.*

*However, what this woman and this notary made my client sign was not a return of documents letter or receipt, but a revocation of a power of attorney, probably a new power of attorney and other documents in English that my client did not draft, understand, never intended to sign or instructed this notary to prepare and witness. Also, this notary witnessed and gave my client a letter to sign in English stating that he did not want me to be his lawyer anymore. My client never intended to write this.*

*It is critical to mention that my client does not speak English. If <the Notary> speaks < Client's native language>, in no part of the document that he made my client sign was stated that he explained to <the Client> the English content of the premade document in his native language, <...>. As a result, the document drafted by this notary is invalid.*

*I became aware of this abusive situation against my client on Monday, Feb 10. <first name of person> friend of my client who was with him present that day, informed the new attorney <person B> about this. I was then on the phone with <the Client> yesterday February 12, and we spoke in our native language, <...>. He had no idea that what he signed was a revocation of the powers of his current attorney <Person B>, and termination of our solicitor-client relationship.*

*The notary did not leave a copy of the documents he witnessed and or made or was instructed to make to <the Client>. I had to write to <Person A> asking her to instruct the notary to send me the documents my client signed in his presence. It was yesterday February 12 when I received those documents directly from the notary.*

*I also question the steps that this notary took to make sure that my client had the capacity to understand what he was signing. His sight is almost gone, and he has extremely poor hearing. You almost must yell at him. He also gets quite tired and it is questionable why this notary had to go on a Sunday evening to do this. The notary commanded the friend of <redacted>, to leave the premises so he and <person A> could be alone with <the Client>.*

*To summarize, my client never hired this notary, never communicated with him or instructed him to revoke the power of attorney. When <the Notary> attended the house of my client he did so under the command and payment of <person A>.*

*a previous attorney, with pre-made documents in a language that my client does not speak or read.*

*This is a breach of section 7-G1 of the Notary Guidelines of Professional conduct, conflict of interest, 7-G3.2 not allowing my client to be properly advised and commentaries 7.1 to 7.4 and 8-P3 by receiving payment from a third party.*

*The notary also did not obtain a copy of <The Client's> ID directly from him. The ID was given to the notary by <Person A>, as she was the one that retained the passports for over a year and instructed by the police and coastal health to return them.*

*What are the sections of the Principles for Ethical and Professional Conduct from the BC Notaries this notary breached? Some of the sections are 2-P1, 2-P2, 2P3, 3-P1, 7-P1, 8-P3, 1.2 (d) (g) (i), 2-P2, 2-G1, 2-G6, 3-G1, 3.2, 4.8, 7-G1, 7-G3.2, 8-P3, 8-G1.1.*

Counsel submitted a further letter of complaint. While much is repeating what is contained above, the second letter also included alleged pecuniary damages. The letter is produced below:

*"Yesterday I submitted a complaint against this notary based on a power of attorney he made and witnessed on instructions of a third party who wishes to access the accounts of this elder without his consent and knowledge. The elder never instructed this notary. The elder did not know what he was signing.*

*As a result of the actions of this notary, the elder is experiences pecuniary damages. We believe that the person that instructed the notary to make the power of attorney attempted to access the accounts of the elder. I had to communicate with the bank and it seems now that the accounts are frozen and no funds will be disbursed to my client.*

*I do hope that there is a fund or insurance of the notaries, in case my client keeps experiencing pecuniary damages.*

*Yesterday when I called your office and I was informed that Mr. John Major will return next week. I am writing to let you know that this matter requires immediate attention and investigation. There is a serious risk of fraud.*

*Please note that I will be away from the country from tomorrow until March 3 for work. Please send me an email with comments or concerns and I will call back.*

*Finally, I am sharing a letter I sent to this notary yesterday, informing him about his breaches to the professional code.*

*Thank you very much.”*

### Response from the Society.

The Society responded to advise the complainant that the complaint would be investigated and that pecuniary or loss due to error or omission, or financial compensation are outside of the mandate of the regulatory body and that Notaries carry insurance for those purposes. It is apparent from various communication with Counsel that he is of the opinion that the Notary should be terminated. The communication also sought to elucidate and understand what remedies would satisfy the complainant.

### Regulatory Framework

The [Notaries Act](#) establishes the authority and sets out the investigative framework<sup>i</sup>. Sections 26 through 35 have been included as an endnote to these reasons for easy reference.

Whereas section 27 provides for the Committee to sit in panels “of 3 or more”, the entire Committee took part in the inquiry. The inquiry proceeded by way of written hearing with the Committee agreeing that an oral hearing was not required.

Section 28 authorizes and empowers the discipline committee to inquire into the conduct of a member. The section sets out, in two sub-sections, those acts for which the committee may conduct an inquiry.

Section 28(1) says:

*(a) misappropriation or wrongful conversion by the person of money or other property entrusted to or received by the person in the person's capacity as a member of the society;*

- (b) incompetence;*
- (c) other professional misconduct;*
- (d) a breach of a provision of this Act or a regulation or rule made under it, or of a bylaw of the society.*

Section 28(2) says:

- (2) In the same manner as in subsection (1), the discipline committee may inquire whether a member or former member has engaged in conduct that in the opinion of the committee, 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 interest of the public or the notarial profession or tends to harm the standing of the notarial profession.*

The Complainant has suggested and set out a number of provisions of the Principles for Ethical and Professional Conduct as allegedly having been violated.

Section 3.03 of the Bylaws of the Society say:

*Every member shall comply with the following, as amended from time to time:*

- a) The Notaries Act;*
- b) Any regulations made pursuant to the Act;*
- c) These Bylaws;*
- d) The Rules of the Society; and*
- e) The Principles for Ethical and Professional Conduct of the Society.*

The Committee agrees that the allegations fall within the authority of the Committee to inquire into through the provisions of the Act section 28(1)(d).

### Principles for Ethical and Professional Conduct

The complainant alleges that the Notary breached, at a minimum, the following sections of the Principles for Ethical and Professional Conduct. The Principles document is framed in a format in which the principle is set out and then followed, in some cases by guidelines, and a commentary.

Each of the provisions of the Principles along with the guidelines and commentary alleged to have been violated follow:

## *Principles for Ethical and Professional Conduct*

### *Principle*

#### **1. Integrity**

1-P1 Every Member should discharge his or her duties to his or her clients, members of the public and fellow Members with integrity.

### *Commentary*

1.2 Members should endeavour 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. This requires that Members be faithful to their clients, honest, fair, candid (always with due regard for confidentiality of information), courteous, and true to themselves.

1.3 One cannot exhaustively and definitively describe conduct which lacks integrity. Many of the other provisions of this Code describe conduct which lacks integrity. In addition, the following are examples of conduct which may lack integrity:

(d) taking advantage of a client, including taking advantage of a client's youth, old age, inexperience, lack of education, lack of sophistication, ill health, or unbusinesslike habits;

(g) knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly or illegally;

(i), when dealing with a person who is not legally represented, taking unfair advantage of that lack of representation for the benefit of the Member or his or her client;

### *Principle*

#### **2. Avoiding Questionable Conduct**

2-P1 A Member should avoid engaging in dishonourable or questionable conduct, either privately or professionally, that reflects adversely upon the Member's professional integrity or competence or that reflects adversely on the integrity of the notarial profession.

2-P2 Members should take reasonable steps to protect against fraud, misrepresentation or unethical practices.

2-P3 Members should ensure that they are aware of and comply with all legal obligations imposed on them, including any provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act applicable to them.

**Guidelines**

2-G1 *Suspicious Documents and Transactions*– A Member should not execute a false or incomplete document, nor be involved with any document or transaction which the Member knows or suspects is false, deceptive, fraudulent, or illegal.

2-G6 *Unrepresented Persons* – A Member should not advise an unrepresented person in a transaction, but should urge such a person to obtain independent advice and, if the unrepresented person does not do so, the Member should take care to see that such person is not proceeding under the impression that his or her interests will be protected by the Member.

*Principle*

**3. Preparation and Swearing of Documents**

3-P1 Members should employ great care in the preparation of documents and should be meticulous and conscientious in the attesting of them.

**Guidelines**

3-G1 *Signatories* – Members should carefully screen the identity and voluntariness of each signatory and oath taker, and to observe that each appears to be aware of the significance of the transaction requiring a notarial act.

*Commentary*

3.2, Absent a specific statutory requirement, the usual and generally accepted methods of identifying a deponent or grantor are:

- a. the deponent is personally known to the member;
- b. the deponent is properly identified by another person who is known to the member or produces acceptable identification;
- c. the deponent produces a valid passport, citizenship card with photo, or other government issued photographic identification.

*Principle*

**4. Competence, Quality of Service and Relationship to Clients**

4-P1 Every Member should competently perform the services that the Member undertakes on the clients' behalf.

*Commentary*

4.8 Concerns about quality of service tend to focus on areas such as the following:

- a. failure to keep the client reasonably informed;
- b. failure to answer reasonable requests from the client for information;
- c. failure to respond to the client's telephone calls or to keep appointments with clients without explanation or apology;
- d. informing the client 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. failure to answer within a reasonable time a communication that requires a reply;
- f. doing work in hand but doing it so belatedly that its value to the client is diminished or lost;
- g. mistakes or omissions in statements or documents prepared on behalf of the client;
- h. failure to maintain office staff and facilities adequate to the Member's practice;
- i. allowing staff members to perform functions, including providing advice, which should only be done by a Notary;
- j. failure to make a prompt and complete report when the work is finished or, where a final report cannot be made, failure to make an interim report where one might reasonably be expected; and
- k. Any disability (e.g. substance abuse, etc.), which interferes with or compromises a Member's services to the client.

*Principle*

***Conflict of Interest***

7-P1 Members should avoid conflicts of interest and should avoid engaging in any activity which reasonably may be expected to give rise to a conflict of interest with a client.

Guidelines

7-G1, Conflict of Interests between Clients - A Member should not ordinarily advise or represent both sides of a transaction. Where not otherwise prohibited by law, the Society recommends that a Member advise or represent both sides of a transaction only if:

- a. the Member reasonably determines that the matter is not likely to give rise to a conflict of interests between the two parties;
- b. the Member makes adequate disclosure to both sides that the Member intends to act for both sides and that no information received from one side in connection with the transaction can be withheld from the other side; and
- c. the Member obtains the consent of both clients or prospective clients to acting for both sides and their agreement that, if a conflict develops which cannot be resolved, then the Member will not continue to act for either of them. This consent should be provided by the clients in writing or confirmed in writing by the Member in a separate letter to each client;

7-G3.2, A Member must not prepare or participate in the signing of an instrument giving the Member or an associate of the Member a substantial gift from the client, including a testamentary gift, without ensuring that the client is independently advised.

***Fees and Disbursements***

8-P3 A Member should not, by receiving or bargaining for compensation from any source except his or her client, put himself or herself in a position which might interfere with the Member's undivided loyalty to the client.

## Guideline

### 8-G1.1

A Member should not take any fee from anyone other than the client without full disclosure to and the consent of the client and, where the Member's fees are being paid by someone other than the client, such as a borrower, a relative or an agent, the consent of that other person.

## The Notary

The Notary was commissioned by the Supreme Court of British Columbia and became a member of the Society. The Notary was and remains a member in good standing. There is no record of disciplinary history.

## Practice Inspection & Trust Audits

The Notary has been subject to routine practice inspections and Trust Account Audits. As part of the investigation, the Committee received copies of the Notary's most recent practice inspection and trust audit reports.

## Analysis

The Committee agrees that they have the legal authority to inquire into the allegations.

## Identifying the complainant

The Committee considered who the complainant is in this matter. Whereas section 28(1) of the Act says "... on the application of a person... the discipline committee may inquire whether..." meaning that a complainant does not have to be a client and, as in the situation in this matter, may be a person with knowledge of the matter. There is diverging information about the capacity of the Client. The Notary felt that the client had the capacity to understand the nature of the transaction being contemplated. Counsel questioned whether the client had the ability to hear and understand the nature of the transaction. The Committee recognizes that the Client is an elderly person whose language of communication is not English. It is also clear from the complaint that Counsel appears to be ably representing and speaking

for the Client. Given these factors, the Committee agrees that there would be significant difficulties in interviewing the Client with the value of the information unlikely to lead to a different conclusion.

The Committee also accepts that the form and content of the information submitted is more likely to be those of Counsel's as opposed to the Client's. Based on this the Committee accepts that Counsel is the complainant and is representing the best interests of his client.

#### Value of evidence from other participants

The Committee next weighed the benefits of interviewing any of the other participants. Stepping back from the details, and notwithstanding significant effort to sort what can be best described as personal interests from those of the Client, the Committee is of the opinion that the trustworthiness of any testimony or evidence given by others, with the exception of Counsel, could not be accepted as credible or reliable.

In assessing the matter, the Committee first considered the provisions of the Notaries Act specifically whether the evidence indicates that *a breach of a provision of this Act or a regulation or rule made under it, or of a bylaw of the society*. In order to complete this analysis, the Committee began by looking at each of the sections of the Principles the complainant alleged that the Notary had violated.

Prior to considering each allegation, the Committee noted that the Principles are framed in permissible language. The word "should" is used throughout the guidelines. The Principles differ from standards in which the "must" is more commonly used. This makes a difference in terms of enforceability for discipline as there is a necessary evaluation of when "should" is in fact "must". In the matter of this complaint, some of the Principles will apply to the Client, while others would appear to apply to Counsel.

Claim one

The Notary violated the principle on integrity and specifically 1-P1

*Principle*

**1. Integrity**

*1-P1 Every Member should discharge his or her duties to his or her clients, members of the public and fellow Members with integrity.*

*Commentary*

*1.2 Members should endeavour 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. This requires that Members be faithful to their clients, honest, fair, candid (always with due regard for confidentiality of information), courteous, and true to themselves.*

*1.3 One cannot exhaustively and definitively describe conduct which lacks integrity. Many of the other provisions of this Code describe conduct which lacks integrity. In addition, the following are examples of conduct which may lack integrity:*

*(d) taking advantage of a client, including taking advantage of a client's youth, old age, inexperience, lack of education, lack of sophistication, ill health, or unbusinesslike habits;*

*(g) knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly or illegally;*

*(i), when dealing with a person who is not legally represented, taking unfair advantage of that lack of representation for the benefit of the Member or his or her client;*

The Committee agrees that there is no evidence that the Notary violated the Principle 1-P1. There is nothing that speaks to a lack of integrity in the service provided.

Claim two

**2. Avoiding Questionable Conduct**

*2-P1 A Member should avoid engaging in dishonourable or questionable conduct, either privately or professionally, that reflects adversely upon the Member's professional integrity or competence or that reflects adversely on the integrity of the notarial profession.*

*2-P2 Members should take reasonable steps to protect against fraud, misrepresentation or unethical practices.*

*2-P3 Members should ensure that they are aware of and comply with all legal obligations imposed on them, including any provisions of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act applicable to them.*

**Guidelines**

*2-G1 Suspicious Documents and Transactions– A Member should not execute a false or incomplete document, nor be involved with any document or transaction which the Member knows or suspects is false, deceptive, fraudulent, or illegal.*

*2-G6 Unrepresented Persons – A Member should not advise an unrepresented person in a transaction, but should urge such a person to obtain independent advice and, if the unrepresented person does not do so, the Member should take care to see that such person is not proceeding under the impression that his or her interests will be protected by the Member.*

The Committee agrees that there is no evidence that the conduct of the Notary was questionable in that there is no indication that the notary purposefully undertook dishonourable conduct. In retrospect and with a full reading of all of the information, the Committee agreed that the service provided by the Notary could have better. That there were sufficient indicators to suggest that the chain of events and testation's of those alleging to speak for and protect the Client should have been reason to pause, consider, and question. That view is, again, in retrospect. It is easy to see how the Notary, faced with the competing stories, allegations of abuse, and observations of the client living situation led to the notary making the decision to proceed and seeing those as being in the best interest of the Client.

Claim three

**3. Preparation and Swearing of Documents**

*3-P1 Members should employ great care in the preparation of documents and should be meticulous and conscientious in the attesting of them.*

**Guidelines**

*3-G1 Signatories – Members should carefully screen the identity and voluntariness of each signatory and oath taker, and to observe that each appears to be aware of the significance of the transaction requiring a notarial act.*

*Commentary*

*3.2, Absent a specific statutory requirement, the usual and generally accepted methods of identifying a deponent or grantor are:*

- b. the deponent is personally known to the member;*
- c. the deponent is properly identified by another person who is known to the member or produces acceptable identification;*
- d. the deponent produces a valid passport, citizenship card with photo, or other government issued photographic identification.*

In this matter, there is no indication that the Notary failed to take great care in the preparation and attestation of the documents. There is the allegation that the Notary did not properly identify or obtain the identification documents from the Client. The Notary's file includes a photocopy of the Client's identification as well as notes that reflect the care the Notary took in identifying the Client. The issue of who held the documents is one of record. Person A held the documents and was supposedly returning those to the Client. This type of scenario is not entirely unusual and generally would not be a cause for concern. It is not an expected standard of practice that a legal professional would conduct background checks on persons telling a story as was told in this situation.

Claim four

**4. Competence, Quality of Service and Relationship to Clients**

*4-P1 Every Member should competently perform the services that the Member undertakes on the clients' behalf.*

*Commentary*

*4.8 Concerns about quality of service tend to focus on areas such as the following:*

- a. *failure to keep the client reasonably informed;*
- b. *failure to answer reasonable requests from the client for information;*
- c. *failure to respond to the client's telephone calls or to keep appointments with clients without explanation or apology;*
- d. *informing the client 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. *failure to answer within a reasonable time a communication that requires a reply;*
- f. *doing work in hand but doing it so belatedly that its value to the client is diminished or lost;*
- g. *mistakes or omissions in statements or documents prepared on behalf of the client;*
- h. *failure to maintain office staff and facilities adequate to the Member's practice;*
- i. *allowing staff members to perform functions, including providing advice, which should only be done by a Notary;*
- j. *failure to make a prompt and complete report when the work is finished or, where a final report cannot be made, failure to make an interim report where one might reasonably be expected; and*
- k. *Any disability (e.g. substance abuse, etc.), which interferes with or compromises a Member's services to the client.*

From a regulatory and discipline perspective, competence (or more so incompetence) is very different than “quality of service”. Section 28 of the Notaries Act establishes as one of the conducts to which the Committee may inquire into as incompetence. The Committee accepts that competence, or incompetence, is not determinable on a one-time event. That both are patterns of behaviour or conduct that rise above, in the case of a competent practitioner, or fall below, in the case of an incompetent practitioner, the standard of practice and care. The investigation and consideration of the Notary's registration history does not reveal a pattern of complaints or behaviours that call into question his competence.

With respect to quality of service, the Committee agrees that the disciplinary test for quality of service must be linked to competence. On that basis, the allegation that the quality of service that the Notary provided in this matter was less than competent or that the quality of service demonstrated incompetence is not found in the evidence.

Claim five

**Conflict of Interest**

*7-P1 Members should avoid conflicts of interest and should avoid engaging in any activity which reasonably may be expected to give rise to a conflict of interest with a client.*

*Guidelines*

*7-G1, Conflict of Interests between Clients - A Member should not ordinarily advise or represent both sides of a transaction. Where not otherwise prohibited by law, the Society recommends that a Member advise or represent both sides of a transaction only if:*

- b. the Member reasonably determines that the matter is not likely to give rise to a conflict of interests between the two parties;*
- c. the Member makes adequate disclosure to both sides that the Member intends to act for both sides and that no information received from one side in connection with the transaction can be withheld from the other side; and*
- d. the Member obtains the consent of both clients or prospective clients to acting for both sides and their agreement that, if a conflict develops which cannot be resolved, then the Member will not continue to act for either of them. This consent should be provided by the clients in writing or confirmed in writing by the Member in a separate letter to each client;*

*7-G3.2, A Member must not prepare or participate in the signing of an instrument giving the Member or an associate of the Member a substantial gift from the client, including a testamentary gift, without ensuring that the client is independently advised.*

The Committee is of the opinion that there was no conflict of interest in the delivery of service in this matter. The Notary charged a fee for a service that was reasonable. It is notable that a stop payment was issued and for all the effort the Notary went through to provide a service and protect the Client he was not paid.

Claim six

***Fees and Disbursements***

*8-P3 A Member should not, by receiving or bargaining for compensation from any source except his or her client, put himself or herself in a position which might interfere with the Member's undivided loyalty to the client.*

*Guideline*

***8-G1.1***

*A Member should not take any fee from anyone other than the client without full disclosure to and the consent of the client and, where the Member's fees are being paid by someone other than the client, such as a borrower, a relative or an agent, the consent of that other person.*

The Committee is of the opinion that this allegation is entirely unfounded. The Notary's file does not include a copy of the cheque issued for payment. Counsel asserts that the cheque was written by Person A. The position of the Notary is that the cheque was written by the Client. Counsel alleges that it was Person A who paid for the service. The Committee considered why Person A would place a stop payment on the cheque when Person A would have been restored as the attorney. The Committee accepts that it is unlikely that Person A would have stopped payment and that the Notary's contention that the Client issued the cheque is more likely.

The test in this principle is whether or not the Notary's loyalty was divided.

Excepting the perspective of Counsel, all indications are that the Notary acted in the full and best interest of the client given the stories that were told.

The test for the Committee and then for the Directors who will be receiving this report, is not whether the Notary could have done better. The test is whether the actions of the Notary were so egregious that they fell below the standard expected of a legal professional AND disciplinary action is the best tool to address the matter.

### Other considerations

Although the Committee has considered each of the allegations made by Counsel, as have been detailed in these reasons for decisions, the Act provides for the Committee whether a complaint has been made or not, to inquire into those acts and things listed in the Notaries Act section 28(1)(a) through (d).

### Conclusion

The Committee concludes that there is no evidence to support a report to the directors that would include a recommendation that the notary:

- 1) has committed any of the infractions set out in section 28(1), or
- 2) engage in conduct that is contrary to the public interest.

Based on the findings made during the investigation, it is the recommendation of the Discipline Committee that the directors act pursuant to section 35(2)(a) of the Notaries Act and, by resolution, agree that the Notary has not committed any of those infractions or engaged in that conduct and therefore exonerates the member and dismiss the complaint.

Decision dated the 28 day of January, 2021

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**<sup>i</sup> Powers of discipline committee in relation to an inquiry**

**26** (1) The directors must appoint from among their number a discipline committee whose quorum is not less than 3.

(2) In the case of a vacancy, the committee may appoint a director to fill the vacancy until the directors do so.

**Inquiry by discipline committee**

**27** (1) A panel of 3 or more members of the discipline committee may inquire into the conduct of members or former members.

(1.1) For the purposes of an inquiry under this section, sections 34 (3) and (4), 48 and 49 of the [Administrative Tribunals Act](#) apply to the panel.

(1.2) If a member of a panel is unable for any reason to complete the member's duties, the remaining members of that panel, with the consent of the discipline committee, may continue the inquiry, and

(a) the vacancy does not invalidate the inquiry, and

(b) the provisions of this section concerning the panel apply to the remaining panel members.

(2) The committee or the panel may provide for preliminary inquiries by a member of the committee or by the secretary.

(3) The committee may order the suspension of the member until the consideration of its report by the directors.

(4) The committee or the panel may, at any time after a decision to inquire into the conduct of a member has been made, suspend the member until the conclusion of the hearing.

(5) Notice of a suspension under subsection (4) must be served on the member promptly.

**Discipline inquiries**

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**28** (1) At the request of the directors or on the application of a person, or of its own motion, the discipline committee may, whether a complaint is made or not, inquire whether a member or former member has been guilty of any of the following:

- (a) misappropriation or wrongful conversion by the person of money or other property entrusted to or received by the person in the person's capacity as a member of the society;
- (b) incompetence;
- (c) other professional misconduct;
- (d) a breach of a provision of this Act or a regulation or rule made under it, or of a bylaw of the society.

(2) In the same manner as in subsection (1), the discipline committee may inquire whether a member or former member has engaged in conduct that in the opinion of the committee, 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 interest of the public or the notarial profession or tends to harm the standing of the notarial profession.

#### **Notice of inquiry by discipline committee**

**29** (1) At least 7 days before an inquiry under section 27 is held, notice of the inquiry must be served on the member or former member in person or by registered mail sent to the last address shown on the records of the society.

(2) The notice must set out the time and place of the inquiry and give particulars of the complaint or of the matters to be inquired into.

(3) A notice sent by registered mail is conclusively deemed to have been given by the committee and to have been received by the member or former member on the 14th day after deposit of the notice in the Canada Post Office at any place in Canada.

#### **Appearance before discipline committee**

**30** A member or former member may appear personally or with counsel before the discipline committee, and before the directors, on an inquiry or hearing into the person's conduct or competence and may cross examine witnesses and present evidence.

#### **Nonappearance**

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**31** If the member or former member fails to appear and on proof of service of notice, the discipline committee may proceed with the inquiry without further notice to the member or former member and may make a report of its findings, with or without a recommendation of action to be taken, or take other action it is authorized to take under this Act.

**Legal assistance to discipline committee**

**32** The discipline committee or the directors may, for an inquiry or hearing, employ legal or other assistance they think necessary.

**Report of discipline committee**

**33** The discipline committee must submit a written report of its findings to the directors.

**Action by directors on report of discipline committee**

**34** On receipt of the report and on giving reasonable notice to the member or former member, the directors may

- (a) accept and adopt a finding of fact reported by the discipline committee,
- (b) review the proceedings and evidence taken by the committee,
- (c) hear further evidence, and may make further findings of fact on the evidence, or
- (d) refer the matter to the committee for further inquiry as to the whole or a specific part of it, in which case the provisions of section 29 apply.

**Decision by directors**

**35** (1) On the conclusion of the inquiry the directors must decide whether or not the member or former member

- (a) has committed any of the infractions which may be inquired into under section 28 (1), or
- (b) engaged in conduct that in the opinion of the directors, is contrary to the best interests of the public or the notarial profession or tends to harm the standing of the notarial profession.

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- (2) By resolution passed by a majority of the directors present, the directors may
- (a) if they decide that a member or former member has not committed any of those infractions or engaged in that conduct, exonerate the member or former member and dismiss the complaint,
  - (b) if they find that a member has committed any of those infractions or engaged in that conduct,
    - (i) reprimand the member and, in addition, fine the member an amount of not more than \$5 000,
    - (ii) suspend the member for the period and subject to the conditions of practice they think fit and, in addition, fine the member an amount of not more than \$5 000, or
    - (iii) order that the membership of the member be terminated, or
  - (c) if they find that a former member has committed any of those infractions or engaged in that conduct, fine the former member an amount of not more than \$5 000.
- (3) In any case, the directors may impose costs and set the amount of costs.