

Decision of the Membership and Admissions Committee

Applicant – Redacted

These are the reasons for decision in the consideration of the application of the person named above. For reasons that should be clear, these reasons are more detailed and in depth than what would be normally expected. This is an extraordinary decision of the Committee.

Decision – The Membership and Admissions Committee of the Society of Notaries Public of British Columbia, having considered the applicant’s application and subsequent communications, rejects the applicant’s application for entry into the Notary Education Program.

Reasons for Decision

Background

A. First Application

1. The applicant first applied for entry into the Notary Education Program in 2015. He completed each of the steps in the application process.
2. The 2015 application was rejected by the Society.
3. The practice at that time, as was stated in the application material, Handbook, and the Society Rules was that no reasons were provided.
4. The applicant, upon receiving notice of rejection, submitted a number of requests for information pursuant to the *Freedom of Information Act* and subsequently filed complaints with the Office of the Privacy Commissioner, Office of the Ombudsperson, and with the Human Rights Commission.

5. As a result, the Society changed its practice and provides reasons for administrative decisions.

B. Making application for the Notary Education Program and SFU

6. In or about 2010 the requisite education for a person wishing to become a member of the SNPBC moved from the University of British Columbia to a program offered by Simon Fraser University.
7. The SNPBC worked in conjunction with SFU to develop a program that would provide an academic foundation for non-lawyer legal practitioners in BC.
8. Ultimately, SFU approved and implemented the Master of Arts in Applied Legal Studies (MA ALS) program.
9. At the time, the number of spaces available in the program was established, by SFU, at 30.
10. SFU is an independent university with well-established policies and protocols. One of these policies from the department of graduate studies is that a minimum GPA is required for any person making application for entry to a graduate program. The minimum GPA for a graduate program is 3.0.
11. The SNPBC adopted, as a prerequisite to the Notary Education Program, the successful completion of the MA ALS program.
12. In practice, SNPBC established an applications process that had persons making application to the Society prior to or in advance of making application to SFU.
13. The SNPBC process included a detailed application form, financial background and criminal record checks, an interview with the CEO and finally an interview before a panel of the Society.
14. With the number of spaces allocated by SFU within the program as the determining factor, each panel would, on the basis of all information

available, make recommendations to the Membership and Admissions Committee for accepting an applicant into the Notary Education Program.

15. The application approval process of the SNPBC was separate and distinct from that of SFU.
16. SNPBC used, as one of the criteria for considering an application, the minimum GPA established by SFU so as to reduce the likelihood that an applicant would be approved by SNPBC yet rejected by SFU.
17. It is important to point out that all applicants who proceeded to panel interviews met all the criteria for acceptance. Every applicant met the SFU GPA requirement as well as the requirements established by the SNPBC.
18. No applicant would be approved for panel Interviews if they had not completed the applications process or failed to meet any of the requirements.
19. It was explained to every applicant during the preliminary interview with the CEO and prior to any applicant being approved to proceed to panel interviews, that the decisions made by the panels were subjective. That all applicants proceeding to panel interviews met all the objective criteria and that the panel were assessing characteristics. The limited number of spaces resulted in applicants who were otherwise fully qualified, being denied entry to the Notary Education Program.
20. The membership and admissions committee would provide the name and applicant information (with the permission of the applicant) for 32 persons.
21. SFU had its own applications process that those persons referred by the Society would then have to complete.
22. Prior to making a second application to the Society for entry into the Notary Education Program, AK made application directly to SFU for acceptance into the MA ALS program.

23. SFU accepted AK into the program and AK successfully completed the MA ALS degree.

C. Second Application

24. AK submitted a second application for entry into the Notary Education program on January 1, 2020.

25. AK included a transcript from SFU demonstrating the completion of the credential.

Additional requirements

26. In between AK's first and second application the Society added two requirements to the application process. Applicants now required the following pre-requisites:

- a. completion of one university or college level accounting course at an introductory level, and
- b. completion of a writing exercise.

27. The two requirements were considered and recommended by the Membership and Admissions Committee to the Board of Directors and approved by the directors.

28. In reviewing AK's application, it was determined that there was evidence in a transcript of completion of an accounting course that met the requirement.

29. AK did not complete the writing exercise.

Request for Accommodation

30. AK is a person with a disability. As such he requested that accommodation be made in the form of a waiver of the requirement to complete the writing exercise.

31. The committee considered the request and denied the out-right waiving of the requirement. In recognition of AK's disability, the committee agreed to accommodate and requested that AK indicate the nature of accommodation required.

D. COVID Pandemic and Panel Interviews

32. In early 2020, as the Society was making arrangements and scheduling panel interviews, it became evident that COVID-19 was a more serious matter than first anticipated. Out of an abundance of caution, it was agreed that out of town applicant interviews would be conducted via video conference. The option to have the interview conducted via video conference was also extended to local applicants. Some panel members attended via video conference.

33. Each year, every member of an admissions panel must attend an orientation. The orientation is designed to seek to ensure that panel members are not influenced by any applicant's previous application, that each annual cohort is assessed only on the persons being interviewed, with the focus being on the strengths, character, and attitude of the applicant.

34. The Society has a long history of ensuring its practices are not discriminatory on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age of an applicant.

35. Despite AK's application not being completed due to him not having completed the writing exercise, the panel agreed to conduct the interview. The panel and committee made accommodations given the emerging nature of the pandemic.

36. Having knowledge that AK had previously been denied entry to the Notary Education Program and that there was a complaint made to the BC Human Rights Commission, management arranged to have legal counsel:

- a. attend the panel orientation session, and
 - b. deliver to the panel members an educational session and information about human rights, persons with disabilities, and accommodation.
37. As AK completed the panel interview process, there were technical issues with the internet connection. While the source of the issues could not be determined, all other participants on that call did not experience any connection difficulties. These issues did not affect the overall nature of the panel interviews and played no role in the panel's consideration of AK's application.
38. The panel made recommendation with respect to AK's interview, which the committee accepted. The Committee agreed that AK would be required to complete the application process prior to being advised of the decision of the Committee. This was communicated to AK.
39. AK has taken the position that he has demonstrated his ability to write through his academic education including the completion of the SFU MA ALS program.

E. The Society of Notaries Public

40. The Society of Notaries Public of British Columbia (SNPBC) is a society registered under the Societies Act in BC. First registered in 1926, the Society acted as an association of members until sometime in the 1950's. At that time, the government established legislation for notaries public.
41. The *Notaries Act* has been amended various times up to the current 1996 consolidation.
42. Provisions dealing with enrolment, while having been amended, remain in the legislation.
43. There are a number of provisions within the Act that are relevant to AK's application.

Notaries Act

44. There are few references to the SNPBC in the Act.
- a. Section 2 says: *The Society of Notaries Public of British Columbia is continued*, and
 - b. section 3 provides for the attorney general to consider and approve the SNPBC Bylaws and excludes the bylaws from the *Societies Act*.
45. The Act then sets out, in a series of sections, the role of the Supreme Court of BC in considering applications for enrolment as a member. The Act defines that “member” means member of the society.
46. It is the responsibility of the Court, being satisfied that an applicant is a fit person for enrolment, to order that the applicant be examined.

Board of Examiners

47. The Act, in section 10 provides for the Attorney General to appoint three persons to be the Board of Examiners. The Board of Examiners conduct the examinations of applicants for enrolment.
48. The Notary Regulation [B.C. Reg. 229/2004] provides further information about the examinations. Including:

Board of examiners

3. The Board of examiners

- (a) has control and conduct of the examination of applicants*
- (b) Having consideration for the convenience of applicants, must appoint the time and place of examinations, and*
- (c) must mark the examinations and report the results to the secretary of the society.*

SNPBC Bylaws and the Notary Education Program

49. The Bylaws include the following interpretation:

“Candidate” means an applicant for membership investigated, approved and supported by the Society in his/her efforts to join the Society;

50. The bylaws of the SNPBC include provisions related to membership including the following provisions:

3.02 Every Candidate who successfully passes the statutory examination shall become a member in good standing of the Society after:

- (a) successfully completing the prescribed curriculum including any practical training established by the Board pursuant to these Bylaws;*
- (b) enrolment;*
- (c) having paid the Society’s admission fee in the amount prescribed by the Board from time to time; and*
- (d) having paid the applicable annual fees and assessments for the balance of the current year.*

51. Under the marginal note **“Powers of Directors”** the bylaws provide that:

6.06 In furthering the purposes of the Society, the Board shall establish and regulate

- (a) the standards of education for notarial candidates,*
- (...)*

6.07 The Board may, without limited the generality of the foregoing:

- (a) prescribe a curriculum and course of studies to be pursued by Candidates;*
- (b) establish courses, lectures, classes and seminars for Candidates and enter into agreements with governing bodies of British Columbia universities or other approved institutions of learning within the Province for the provision of such lectures, classes, seminars and correspondence courses as may be required from time to time;*
- (c) (...)*

52. Under provisions for the establishment of committees, the bylaw establishes the Membership and Admissions Committee and in section 8.13 says:

8.13 The Membership and Admissions Committee has the duty to consider all applications for membership, to establish qualifications for admission, to evaluate each Candidate's application record; and to recommend to the Board applicants for admission as Members of the Society.

53. To summarize, the legislative and legal framework provides for the SNPBC to establish:

- a. standards of education for notarial candidates,
- b. requirements, including requisite knowledge, skill, and ability, and
- c. a curriculum and courses of study.

Rules of the Society

54. In addition to the Act, Regulation, and bylaws, the SNPBC has established Rules. The relevant section of the Rules is section 2.01, which states:

Admission to the Membership shall be subject to the Membership and Credential Rules and Policy Guidelines, approved by the Board and published by the Membership Committee.

Membership Admissions and Credential Rules and Policies

55. The Rules and Policies further define and clarify the applications process and the expectations of the SNPBC of persons wishing to become members.

56. At the time of AK's application, the following rules and policies were in place:

The Notary Preparatory Course

The two-year Notary Preparatory Course consists of a phased program offered partly through Simon Fraser University and partly through BCN. Program phases are:

Phase 1:	<i>A Mediation Certificate course administered through BCN (5 days in person)</i>
Phase 2:	<i>Master of Arts in Applied Legal Studies degree program delivered by Simon Fraser University (MAALS) - a mix of in-person and distance education delivered in four semesters over approximately 18 months.</i>
Phase 3:	<i>BC Notaries Practical Training (BCNPT) course delivered and administered by BCN, consisting of up to six (6) weeks of a combination of in-person practical training in a variety of courses as determined from time to time by BCN's Education Committee.</i>
Phase 4:	<i>105 hours (3 weeks) of in office mentoring with an approved, experienced Notary</i>
Phase 5:	<i>Satisfactory completion of six statutory admission examinations administered by Examiners appointed from time to time by the Ministry of the Attorney General</i>

Initial Steps for Application

- 1. The Society, after determining the Applicant is eligible under the Notaries Act, the Bylaws and any Rules, will provide the Applicant with The Society's Application for Enrolment Form.*
- 2. The Applicant will provide all documentation, information, and any releases that may be required.*
- 3. The Applicant shall pay the any fees required.*

Note:

If an Applicant is deemed ineligible for membership after his/her application and character has been duly reviewed, the Applicant shall forfeit the application fee.

57. With respect to qualifying as an applicant, the rules and policies provide:

QUALIFYING AS AN APPLICANT

CATEGORY ONE - APPLICANTS WITHOUT A CANADIAN LAW DEGREE

1. CHARACTER

Applicants shall have the customary and accepted moral standards of community regarding integrity and social responsibility that a reasonable person owes to society in general. Applications for individuals whose conduct in the past has been called into question with respect to justice, honesty, modesty, or good morals shall be subject to review by the committee, as will any Applicant with a criminal record or record bankruptcy or consumer proposal.

2. **EDUCATION**

- *Applicants shall have a degree from a recognized university or university college or hold a recognized professional designation having a GPA of 3.0 or higher.¹*
- *Each applicant must demonstrate the completion of a Financial Accounting program at a first year or introductory level from an accredited educational institution.²*
- *Complete any other pre-requisite requirements established by the Committee.*

3. **CAREER EXPERIENCE**

Applicants shall have sound business or employment history.

58. Applicants to the SNPBC Notary Education program are also advised of the following:

- *Preliminary applications received after the deadline will not be considered;*
- *Applications that are not complete by the deadline will not be considered;*
- *Throughout the applications process the Society requires the full cooperation of applicants, please ensure you check emails regularly and submit documents on time and in the correct manner;*
- *Decisions of the panel are final;*
- *Decisions of the Membership & Admissions Committee are final;*
- *Applicants that are successful at the panel interview stage are subject to SFU's independent admission process;*
- *SFU reserves the right to reject applicants;*
- *Applicants that are not accepted onto the MA ALS program are not eligible for the Notary Education Program; and*
- *Unsuccessful applicants must wait two years before reapplying.*

F. Ak's Application

59. On the basis of objective criteria, AK's application is no different than the other applicants who proceeded to panel interviews excepting that each of the other applicants had completed the writing exercise.

60. On the basis of the panel interview, the panel recommended AK's application for entry into the Notary Education Program be denied.
61. The reasons given by the panel relate directly to AK's attitude and character.
62. AK has demonstrated an unwillingness or inability to follow a process and/or comply with established procedures.
63. The committee, on accepting the recommendation of the panel agrees that AK's disposition and adversarial nature is unsuitable to that of a notary public.

G. Nature of Notary Practice

64. Notaries Public have a long history within Roman and common law systems with the origins of practice being that of scribes (scriveners) and records keepers.
65. Notaries Public follow established rules and adhere to established processes.
66. Notaries Public in British Columbia have an expanded scope of practice as is set out in sections 17(1) and 18 of the Act. The scope of practice does not include the practice of any form of adversarial law.
67. By way of example, there are three decisions of the Courts that are relative to the scope of practice:
 - a. In the 1969 *Reference re Notaries Public Society* [69 W.W.R. 475, (sub nom. Reference Re Powers of Notaries Public in British Columbia) 6 D.L.R. (3d) 447] the Court considered the question "Does a Notary Public, qualified and enrolled under the Notaries Act, have and may he exercise the right and power for reward to prepare documents necessary for the incorporation of a corporation and to make application therefor?". The Court, on a narrow definition of the words mercantile and merchant, found that the activity was outside of the scope of practice.

- b. In *The Law Society of B.C. v. Marian B. Gravelle and The Society of Notaries Public of B.C.* considered the question “Could a notary public lawfully advise and assist in the probating of wills in England on 19 November 1858?” and found that “Neither the statute nor the common law authorizes notaries to practice in probate matters. It follows, in line with the Court of Appeal’s reasons in the *Notaries Reference*, that it is the unauthorized “practice of law” as defined in s. 1 of the *Legal Profession Act*, R.S.B.C.1996, c. 255 for a notary public to so act.
- c. In *Law Society of British Columbia v. Siegel* 2000 BCSC 875 the Court considered “If a notary public, for a fee, prepares the usual corporate documents and resolutions to maintain a company in good standing, is that the unauthorized practice of law?” and found that “The services that notaries may perform is a matter for the Legislature. If the Legislature decides that notaries may draft the documents required to maintain a company’s registered and records office in good standing, of course it may do so, but to date, I conclude that it has not.”

H. Discrimination on the basis of disability

- 68. AK has taken the position that the committee’s refusal is based on his disability and that he is being discriminated against.
- 69. The SNPBC regulates members within the framework previously described. As a public interest regulator, the SNPBC seeks to protect the public from harm. Professional regulation provides for regulators to establish systems and processes. A regulator should take steps to ensure that systems and process are fair, unbiased, and comply with Human Rights codes.
- 70. Having knowledge of AK’s first application, the SNPBC took steps to ensure that its processes did not discriminate on the basis of any of the aspects set out in the Human Rights code.
- 71. At no point in the consideration of AK’s application, did race, religion, or disability become a factor. In fact, at no point in the consideration of any applicant are race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender

identity or expression, or age of that person or class of person a factor in determining eligibility for the Notary Education Program.

I. Has the SNPBC denied AK's participation in obtaining a job

72. AK takes the position that the SNPBC's failure to grant him a spot in the Notary Education Program has denied him the ability to work.
73. SNPBC rejects this contention as completing the Notary Education Program is only one step in the process of obtaining a commission as a notary.
74. Further, AK was a regulated paralegal in Ontario and has a paralegal education that would be recognized in BC. BC does not currently have a system of regulation for paralegals. Paralegals are in high demand in BC. AK could have obtained a position as a paralegal.
75. Members of the Society also employ persons with legal knowledge as assistants or conveyancers. While it is not known whether AK applied for positions, AK could have worked in a notary's office in some capacity.
76. Finally, the Law Society of BC has an initiative in which persons who are not members of the Law Society of BC may make application to participate in the innovation sandbox.

J. Alternatives to the Notary Education Program

77. The SNPBC has established the Notary Education Program to assist in preparing persons who wish to become members of the Society prepare for the qualifying examination.
78. The SNPBC, as a society registered under the *Societies Act*, provides the Notary Education program as a a professional organization established by an Act in respect of a program.
79. The *Notaries Act* does not establish the Notary Education Program as a requirement for enrolment, rather the Act provides for a Canadian citizen or permanent resident to apply to the Court and if the Court is satisfied, the

Court may order that the applicant be examined in the duties of a notary public.

80. A person who is qualified as a lawyer would be entitled to make application to the Court for enrolment and the SNPBC has a process, developed under the labour mobility provisions of trade agreements, for such persons.

Conclusion

81. The SNPBC has made every effort to accommodate AK in the application process. Notwithstanding that AK could have completed the pre-requisite in a fraction of the time he has spent writing correspondence to the SNPBC.

82. AK is a determined advocate with a predilection for adversarial processes.

83. In assessing AK's suitability for entry into the Notary Education Program, the Society has neither intentionally nor unintentionally discriminated against any person making application to the Society.

84. AK was advised and fully aware, that all applicants who proceeded to panel interviews met all the objective criteria and that there is no rating or scaling of applicants. The decision is a dichotomous one of accepted or rejected for panel interviews.

85. AK was fully aware that the nature of the panels' recommendation was based on subjective criteria of character and attitude and that each cohort or group of applicants was considered independently of any previous year.

This decision is dated the 18 day of November, 2021.

On behalf of the Membership and Admission Committee and The Society of Notaries Public of British Columbia



John Mayr, Executive Director