

Report issued: March 29, 2022

The Society of Notaries Public of British Columbia
In the matter of the *Notaries Act*, R.S.B.C. 1996, c. 334
and a hearing concerning

Wing Yan (Tammy) Tsui

Report of the Inquiry Panel

Hearing Date: March 9, 2022

Panel: Liza Aboud (chair), Megan Knight, Kate Manvell
For the Society of Notaries Public: John Mayr
For the Member: Wing Yan (Tammy) Tsui

BACKGROUND

1. This is an inquiry pursuant to s. 27 of the *Notaries Act* to report findings as to whether the member is guilty of any of the conduct described in s. 28(1) as:
 - (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 the Act or a regulation or rule made under it, or a bylaw of the society.
2. In addition, pursuant to s. 28(2), this panel inquired into whether the member engaged in conduct that in our opinion 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 interests of the public or the profession or tends to harm the standing of the notarial profession.
3. The *Notaries Act* sets out the framework for the discipline of members. At the conclusion of a hearing, the discipline committee is required to submit a written report to the directors pursuant to section 33.
4. A Notice of Inquiry into this matter dated February 10, 2022 was served on the member, who chose to attend the hearing without counsel.
5. The panel was assisted by its counsel at the hearing and in writing this report.
6. The member was commissioned as a notary in 2019.

7. At the hearing, the Society of Notaries Public (the “Society”) and the member provided evidence and submissions for the panel’s consideration.

THE NOTICE OF INQUIRY

8. In the Notice of Inquiry, the Society sets out the following allegations against the member:

(1) Inspection and follow-up inspection

Rule 18.02 establishes a Practice Inspection Committee whose objectives under Rule 18.02 (b) and (d) are to appoint practice inspectors to conduct practice inspections of Members and to identify Notaries who do not meet accepted standards of practice.

An inspection of the Respondent’s practice was conducted in 2020 and identified deficiencies in best practices standards. A follow-up inspection was requested in accordance with Rule 18.05 (b) and done in 2021 by a different inspector.

This second inspection confirmed that many recommendations from the first report were not implemented, procedures in the Respondent’s practice had not improved and, additionally, the Respondent did not comply with requests for information and documents.

As per Rule 18.04 the respective written reports with findings and recommendations were each time provided to the Respondent who each time elected not to respond.

As per Rule 18.05 (d) both inspection reports were referred in September 2021 to the Discipline Committee for review and determination.

(2) Breach of Rule 18.04: non-cooperation

The inspection reports advise that the Respondent was not cooperative with the inspectors and that, accordingly, the reports were incomplete.

Being uncooperative puts the Respondent in breach of Rule 18.04: A Notary whose practice is being inspected under this rule must:

- (a) permit the inspection and answer any inquiries;
- (b) provide the practice inspector with any information, files or records in the Notary’s possession or power; and
- (c) permit the practice inspector to obtain printed or electronic copy of any information as he/she deems necessary.

(3) Breach of Section 28 (b) of the *Notaries Act*: incompetence

The inspection reports advise that the Respondent is not practicing in accordance with her education and training and does not meet accepted standards of practice. As such, the Respondent is guilty of incompetence (Section 28 (b) of the *Notaries Act*).

ANALYSIS

Position of the Society

9. The Society referred the panel to three exhibits it relied on at the hearing: (1) the first practice inspection report dated July 20, 2020; (2) the second inspection report dated August 12, 2021; and (3) a letter from Ms. Marny Morin, requesting that the practice inspection reports be reviewed by the Discipline Committee.

10. The Society highlighted several points in its submissions against Ms. Tsui:

- a) Ms. Tsui did not respond to two separate written practice inspection reports emailed to her in July 2020 and September 2021, respectively. The first practice inspection was conducted by Ms. Joan Letendre in July 2020, and the second was conducted by Ms. Janice Rutherford in August 2021.
- b) Ms. Tsui did not comply with some requests from the practice inspectors in 2020 and 2021, leading to incomplete practice inspection reports in both instances. In a July 29, 2020 email from Ms. Letendre to Ms. Marny Morin, the Secretary of the Society, discussing the first practice inspection report, Ms. Letendre writes:

Unfortunately files were still incomplete after my second request. In addition, the Central Securities Register and bank statements were not provided by the time of submitting this report.

In Ms. Morin's letter to Ms. Tsui dated September 2, 2021, enclosing the second inspection report, Ms. Morin states:

...the inspector advises that you failed to comply with requests for information and documents and that the report submitted to us is incomplete.

- c) Both practice inspections showed a pattern of Ms. Tsui not meeting accepted standards of practice and demonstrating a lack of attention to detail in many areas. The first inspection report dated July 20, 2020 includes the following observation:

The report indicates significant deficiencies in your file documentation, conflict consents, account charges, and due diligence.

The second practice inspection report states:

As you know, this is a re-inspection of your July 2020 inspection. It is disappointing that you have not implemented many of the recommendations made in the report and that your systems and procedures have not improved as expected.

11. The Society also referred to specific deficiencies in Ms. Tsui's practice in its submissions, some of which are listed below:
- Standard conflict of interest letters were not found on all mortgage files; family transfer files had insufficient notes, no indication of conflict discussions with clients and the Member acted for both parties in some of the family transfer situations.
 - Member does not have a file list for estate planning files.
 - Registered documents are not always in the file.
 - There are no reports to lenders or clients in the files. No follow up on CBA undertakings. No evidence of discharges. Member does not follow up with the vendor's representative and indicates she just checks the LTSA website.
 - No copies of trust cheques, no copies of bank statements showing deposit of mortgage proceeds.
 - She will report to the other side through emails. Emails are not saved in the client file.
 - She does not keep corporate searches and tax searches, as part of the file.
 - She does not keep a master list of personal planning files.
12. The Society submits that the panel should examine the member's conduct starting from the first practice inspection and then the second practice inspection. The Society says that it is only now that a Notice of Hearing has been issued and a panel convened to inquire into the member's conduct that the member has really come to appreciate the seriousness of her lack of attention to detail and lack of ability to practice competently.
13. According to the Society, the member's conduct must be viewed holistically, through both practice inspections. It says the panel should look at the member's practice both in terms of the systems that are in place and those that are absent. It submits that the member's files are deficient and that this presents a real problem, for example, if the member becomes ill or is required to recall details at a later date. The Society says that a member's file may be required for court purposes in some circumstances and that maintaining an adequate file is not only beneficial for members and the Society as a whole but also speaks to the service provided to the public and the work that notaries perform.

Position of the Member

14. Ms. Tsui referred the panel to her letter to the Discipline Committee dated March 5, 2022, with attached schedules.
15. Ms. Tsui submits that she has now reviewed the practice deficiencies and recommendations noted by the practice inspectors and the Society. She says that she has already developed a

plan to remedy each deficiency and to improve the systems in her practice. She believes that once she has completely implemented her plan, mistakes in her practice will be avoided.

16. In addressing her lack of response to the second inspection report, Ms. Tsui stated in her oral testimony that she did not notice the email from the Society attaching the letter dated September 2, 2021 from Ms. Morin and the second report. The email was from a staff member in public and member services at the Society. Ms. Tsui stated that if she had noticed the email and read the letter from Ms. Morin, which contained serious language, she would have taken action. When asked how she did not notice this email, Ms. Tsui stated that she received “so many emails each day” and “just missed that”. Although Ms. Tsui says she did not notice the email containing the second practice inspection report, she admits that she chose to ignore a separate email summarizing the deficiencies found in the report.
17. Ms. Tsui provided a written response addressed to the Discipline Committee dated March 5, 2022, responding to many of the deficiencies listed in the practice inspections. In this response, she admits to several shortcomings in her practice, some of which are listed below:
 - She did not do post-searches on her files. Instead, she relied on the Notice of Receipt to confirm filings and registration numbers.
 - For sale files, she emailed reports to the other notary/lawyer. She did not keep a record of those emails in her files, but they could be retrieved if she needs to look for them.
 - For purchase files, she checked the status of discharges on the LTSA website. If the discharge was already shown on the LTSA website, she did not bother the other side for a report, but she will do so in the future. If the 60 days has passed and the mortgage has still not been discharged, she will send an email to the other side to follow up.
 - She did not report to the Society if the lender failed to provide an executed Form C within 60 days. However, she indicates that she did follow up with the lender and sent them escalation letters via email.
18. In her oral testimony, Ms. Tsui stated that culturally, her clients were fine with phone calls confirming the mortgage release and did not desire discharge documentation. Ms. Tsui also stated that slow mortgage releases by financial institutions were causing clients to question her practices, which is why she preferred to provide verbal assurances to them rather than documentation showing potential mortgage release delays.
19. Ms. Tsui provided oral testimony that when handling a conveyance on behalf of a buyer, she pulls up the BC Assessment website and shows the online photo of the property to the client. She does not order the survey plan for the property to be purchased as part of her standard conveyance process. This can be problematic in certain situations. Typically, during the conveyancing process, Notaries Public receive the contract of purchase and sale indicating the legal description of the property. There is a possibility that the legal description is

incorrectly indicated on the contract and therefore, prudent practice is to print the plan, show it to the buyer, and have the buyer initial the plan to confirm that the property they are purchasing is indeed the one intended.

20. Ms. Tsui admitted in her written response to the Discipline Committee (and in oral testimony) that she only used engagement letters for purchase and sale files but will begin to use them on other files.

Findings of the Panel

21. The findings and decision of the panel are explained below. Whether or not specific evidence has been cited, the panel has considered all of the evidence presented. The panel gave varying degrees of weight to each piece of evidence.

Practice Inspections and Non-Cooperation

22. The panel finds that the allegations against the member in respect of the practice inspections and her non-cooperation with the practice inspectors are established.
23. Ms. Tsui was not responsive to the inspection reports and to a January email (date not specified by Ms. Tsui) sent by the Society listing the deficiencies. Although Ms. Tsui stated she would not have ignored the letter dated September 2, 2021 from Ms. Morin had she noticed it, she did admit that she did not pay much attention to the conversations she had with the second inspector. She said that the practice inspector gave her some recommendations and listed deficiencies in her practice in an email but she had a lot of things to do at the time and just put it aside until February 2022 when she received the Society's materials for this hearing.
24. Reproduced below is an excerpt from an August 16, 2021 email from Ms. Rutherford to Ms. Morin detailing Ms. Tsui's lack of responsiveness, lack of cooperation, and practice deficiencies:

Tammy took a long time to get me the documents I requested. She was always busy with either family or her office. My initial request for her master list was sent on May 27, 2021. My file request email was sent to her on June 7, 2021. After consulting her for a convenient time, I booked a Zoom meeting for Thursday August 12, 2021 and reminded her the day before that she still had a few outstanding documents. She said that she was going to need more time and I refused her request. I was firm with her during the Zoom meeting that I still expected her to provide me with:

- Complete documentation for her April recs for TD, CIBC and RBC trust accounts. I have attached what she gave me for her April trust reconciliations. She did not submit anything for RBC and I did not know it existed until I reviewed Joan's PI report from 2020.
- Wills and Personal planning checklists. She asked me what those were and if I meant the questionnaire the clients fill out. I never did receive anything.
- She does not have a master list of personal planning files so I asked her to create a list of all personal planning done in 2020 and 2021. I still do not have that.
- Tammy could not find her Central Security Register and did not know what a Transparency Registry was.

I have decided to submit my report without the missing documents as what I did view gives me enough cause for concern.

25. In her March 5, 2022 letter to the Discipline Committee, Ms Tsui states:

I have complied with most of the requests from the inspectors for the information and documents. I requested to extend the time for submission, which was approved by the inspectors. I did not intentionally delay the process, but I am the only person in my practice and I needed to scan my paper file and combine with my digital file. I understand this is not an excuse, but I hope you understand that it really took time out from my ordinary work time and family time with 4 children. I have no other hand to help. Finally, I submitted the documents by the agreed deadline.

26. The panel finds that Ms. Tsui considers responding to the practice inspectors as an inconvenience, and she did not take either inspection seriously enough. Ms. Tsui is guilty of not cooperating with the practice inspectors, which prevented them from completing their reports.

Practice Deficiencies and Incompetence

27. The panel finds that the allegation of incompetence is proven by the practice deficiencies documented in the two practice inspection reports and by Ms. Tsui's admissions. These deficiencies are found across Ms. Tsui's work, with a multi-year pattern of sub-standard practices, including files with incomplete documentation and missing notes, lack of provision of documentation to the client, and lack of follow up on key matters.

28. Both practice inspection reports demonstrate a pattern of unacceptable practice standards over a period of at least two years. For example, in the 2020 inspection report, it was noted that:

- (a) True copies of e-filed documents were not kept on file.
- (b) Only half of wills and estate files had client identification saved and no title searches were conducted.
- (c) Three notarizations were of concern: two were not required to be witnessed by a notary and one was for a document in French, a language Ms. Tsui does not understand.

29. Other examples of Ms. Tsui not practicing in accordance with her education and training and not meeting accepted standards of practice are cited in an August 16, 2021 email from Ms. Rutherford to Ms. Morin:

- (a) There are no post-searches in any files and the member is not sure why they are relevant since they say "pending".

A post-search is important as it confirms nothing has changed since the pre-search, such as the addition or deletion of charges.

- (b) She only orders a state of title certificate if the lender requests it. There is no evidence in her purchase, mortgage or transfer files that she actually did what she was paid to do. Registered documents are not always there and she said she only started saving them.

A State of Title Certificate (STC) is a registrar-stamped trackable land title document that should be provided to each client after a conveyance has completed, and copies should be kept in Ms. Tsui's files. The STC should be provided to the lender as it confirms the lender is on title and shows which position the lender is in with respect to financial charges. The STC confirms that:

- Ownership has been registered in accordance with the clients' instructions if there is more than one, e.g., joint tenancy vs. tenancy in common, or correct percentages.
 - Correct charges are on title after the conveyance.
 - The new title holders are on title and do own the property, providing the owners with peace of mind.
- (c) There are no reports to lenders or clients in her files. She just calls clients to let them know the transaction is complete. No follow up on CBA undertakings.

In her letter to the Discipline Committee, Ms. Tsui wrote:

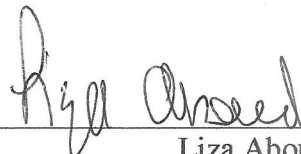
Sale File: I did not report to the clients on the mortgage discharge. I just make sure the discharges will be completed to fulfil my duties to my clients. I informed the client in the signing meeting that it could take some time for the discharge process to be completed. They relied on me and I never received calls from them inquiring about this.

30. Ms. Tsui seems unaware of certain practice standards and has been unable to implement an acceptable standard of practice. She did mention a few times in her oral testimony her inability to adapt to electronic systems such as a digital diary and her preference to rely on paper or manual methods, such as marking the outside of a manila file folder to keep track of file actions.
31. Although Ms. Tsui orally stated she has a plan to “remedy each deficiency and to improve the pattern” in her practice, unfortunately, it took the Notice of Hearing in February 2022 for her to begin making positive changes to her practice. Ms. Tsui stated in her testimony that she has made a few recent changes, such as downloading documents from the LTSA and having the documents auto-forwarded to her email. Nevertheless, the panel still heard the phrases “I will try” or “I will do so in the future” indicating a deficiency still exists in her current practice.
32. Notaries Public owe it to their clients to perform their duties with reasonable care and skill. Ms. Tsui sidestepped proper conveyancing and other procedures, leaving herself and her clients vulnerable to potential errors and legal action.

CONCLUSION

33. The panel concludes that Ms. Tsui is guilty of the conduct alleged in the Notice of Inquiry.

All of which is submitted this 29 day of March 2022



Liza Aboud, Chair