

NOTARIES ACT

CHAPTER 299

Interpretation

1. In this Act

“cessation” means termination of membership of a member in the society and the striking of his name from the roll of notaries public;

“conduct unbecoming a member of the society” includes a matter, conduct or thing that is deemed in the judgment of the directors to be contrary to the best interest of the public or of the notarial profession or that tends to harm the standing of the notarial profession;

“court” means the Supreme Court;

“practice year” means the period from July 1 in any year to the following June 30, both inclusive;

“respondent” means a person whose conduct is being inquired into under this Act;

“secretary” means the secretary or acting secretary appointed by the directors;

“suspension” means temporary disqualification from the practice of a notary public;

“The Society of Notaries Public” means The Society of Notaries Public of British Columbia incorporated under the *Societies Act* on November 2, 1926.

RS1960-266-2; 1967-31-2; 1969-35-20; 1976-33-100.

Approval of bylaws

2. (1) The bylaws of The Society of Notaries Public existing on May 31, 1956, and every bylaw of The Society of Notaries Public made after that date shall be submitted to and approved by the Attorney General and the Benchers of The Law Society of British Columbia, and no bylaw has force or effect until so approved.

(2) Notwithstanding the *Society Act*, a bylaw of The Society of Notaries Public approved under subsection (1) has full force and effect.

RS1960-266-3.

Roll of Notaries Public

3. There shall be prepared and kept in the office of the Registrar of the Supreme Court at Victoria a roll called the Roll of Notaries Public.

RS1960-266-4.

Application for enrolment

4. Every person who seeks enrolment as a notary public shall make application to the court. The application shall be in Form 1, and shall be delivered to the registrar together with a fee of \$10; but no application shall be considered unless the applicant is a British subject and has resided in the Province for a period of 3 years immediately preceding the date of his application.

RS1960-266-6.

Order for examination and enrolment

5. The court, if satisfied that the applicant is a fit person and that there is need of a notary public in the place where the applicant desires to practise, shall order that the

applicant be examined in the duties of a notary public and that, if found qualified on the examination, the applicant be enrolled as a notary public; and the order shall define the area in which the applicant shall, on enrolment, be authorized to practise.

RS1960-266-7.

Power of Chief Justice to provide for examinations

6. The Chief Justice of the Supreme Court shall appoint 3 persons to conduct the examinations of applicants, shall prescribe the subjects in which they shall be examined, shall fix the fees to be paid to the examiners by the applicants and, generally, may make rules for examinations.

RS1960-266-8.

Enrolment after examination

7. On the applicant filing with the registrar proof that he has satisfactorily passed the prescribed examination and has taken the oath of office, in Form 2, before the Supreme Court or a County Court, and on payment by the applicant of an enrolment fee of \$10, the registrar shall enrol the applicant as a notary public and shall record on the roll a memorandum of the area in which that notary public is authorized to practise.

RS1960-266-9.

Power of court to strike off roll or suspend notaries public

8. The court has full power and authority on application by summons or otherwise, in a summary manner by the Attorney General or other person aggrieved, to inquire into the professional conduct or alleged incompetence, negligence or fraud of a notary public, and may for cause shown order that a notary public be struck off the roll of notaries public or be suspended from practising for a period named in the order.

RS1960-266-10.

Prohibition

9. No person shall act as a notary public or hold himself out as qualified to act as a notary public unless he is a member in good standing of The Society of Notaries Public.

RS1960-266-11.

Penalties

10. A person who acts as a notary public or holds himself out as qualified to act as a notary public without being qualified and authorized to do so in accordance with this Act, or who practises outside the area in which he is authorized to practise or in any way contrary to a limitation or condition to which his enrolment or commission is subject, commits an offence, and is liable on conviction to a fine not exceeding \$300.

RS1960-266-12.

Validity of certain acts

11. Notwithstanding any of the preceding provisions, no act done by a notary public shall be deemed invalid or ineffectual by reason only of the fact that it is done outside the area in which he is authorized to practise, or is done contrary to a limitation

or condition to which his enrolment or commission is subject, and nothing in this Act relieves a person acting as a notary public from liability for loss, damages or costs caused to or incurred by another person by reason of an act done while so acting.

RS1960-266-13.

Application of preceding sections

12. The preceding sections of this Act do not apply to barristers or solicitors.

RS1960-266-14.

Right to use title and exercise powers of notary public

13. (1) Subject to section 19, every barrister and every solicitor enrolled under the *Barristers and Solicitors Act* and every notary public qualified under this Act has and may use while enrolled or qualified the style and title of Notary Public in and for the Province of British Columbia, and, except as provided in this Act, has and may exercise while so enrolled or qualified the right and power to

- (a) draw, pass upon, keep and issue deeds, contracts, charter parties, and other mercantile instruments in the Province;
- (b) draw and supervise the execution of wills of the class prescribed by the bylaws of The Society of Notaries Public;
- (c) attest or protest all commercial instruments brought before him for attestation or public protestation;
- (d) administer oaths, affidavits, affirmations or statutory declarations that may or are required to be administered, sworn, affirmed or made by the law of the Province or of any other province of Canada or of Canada or of any country other than Canada;
- (e) perform the duties authorized or prescribed by Act of the Legislature.

(2) No barrister and no solicitor who is disbarred, disqualified or suspended from practice under the *Barristers and Solicitors Act* shall, so long as the disbarment, disqualification or suspension continues, act as or use the style and title of a notary public or have or exercise the powers, rights, duties, privileges or emoluments referred to above.

(3) A notary public is entitled to receive the emoluments pertaining to the office of notary public as prescribed by the bylaws.

RS1960-266-15.

Persons who are deemed to act as notary public

14. A person who for or in expectation of a fee, gain or reward, direct or indirect, draws, prepares, issues or revises or holds himself out as qualified to draw, prepare, issue or revise a document intended, permitted or required to be registered, recorded or filed in a registry or other public office or a will or testamentary document shall be deemed to act as a notary public, unless

- (a) the person is an enrolled barrister or solicitor;
- (b) by the provisions of a statute the document in question is required or permitted to be drawn, prepared, issued or revised by the person or by a member of the class or profession of which the person is a member;
- (c) the person is a clerk or servant acting for his employer and the employer may lawfully do the act himself;

- (d) owing to the remoteness of the place where the act is required to be done a notary public, barrister or solicitor cannot reasonably be engaged to do it.

RS1960-266-16.

Commission

15. The registrar shall on request, and on payment of a fee of \$2, issue to a person empowered to act as a notary public by this Act a commission in Form 3; and shall at any time, on request of a person so commissioned who has not been struck off the roll and is not suspended from practising and on payment of a fee of \$2, give to that person a certificate stating that he is commissioned or entitled to act as a notary public under this Act.

RS1960-266-17.

Appeal

16. An appeal lies to the Court of Appeal from an order or decision of the court under this Act.

RS1960-266-18.

Accounting for fees

17. All fees paid to the registrar under this Act shall be paid into and form part of the consolidated revenue fund.

RS1960-266-19.

Rules

18. The Chief Justice of the Supreme Court may make rules not inconsistent with this Act and prescribe forms and fix fees for all proceedings under this Act not fully provided for and may alter, add to, amend or repeal the rules, forms and fees as and when it may seem to him necessary or desirable.

RS1960-266-20.

Appointments by Lieutenant Governor in Council

19. (1) Notwithstanding the preceding provisions of this Act, the Lieutenant Governor in Council, if satisfied that the appointment of a notary public under this section is necessary in the public interest, may, by Commission under the Great Seal of the Province, appoint a person residing at a place in the rural area of the Province to be a notary public; and an appointment so made may be during pleasure or for a period the Lieutenant Governor in Council thinks fit, and the Lieutenant Governor in Council may define and limit the area in which a person so appointed may practise as a notary public. An appointment and commission under this section shall confer on the person named in it power only to administer oaths, to take affidavits, declarations and acknowledgments, to attest instruments by his seal and to give notarial certificates of his acts. A person appointed a notary public under this section shall pay a fee of \$20 for the public uses of the Province.

(2) (a) Notwithstanding the preceding provisions of this Act, the Lieutenant Governor in Council, if satisfied that the appointment of a notary public under this

subsection is in the public interest may, by Commission under the Great Seal of the Province, appoint

- (i) a permanent employee of the government of the Province;
- (ii) a registrar, or person performing the functions of registrar, of a university continued or constituted under the *University Act*

to be a notary public. A person appointed under subparagraph (ii) shall pay a fee of \$20 for the public use of the Province.

(b) An appointment under this subsection may be made during pleasure or for a period specified in the commission, and a person appointed shall comply with directions contained in the commission as to the limits within which he may exercise his functions as a notary public; provided that, subject to paragraph (c), a failure by the person to comply with the directions shall not invalidate a notarial act he may perform.

(c) An appointment under this subsection shall confer on the person named in the commission power only to administer oaths, to take affidavits, declarations and acknowledgments, to attest instruments by his seal and to give notarial certificates of his acts.

(3) No person appointed under subsection (1) shall practise as a notary public unless he is a member in good standing of the Society of Notaries Public.

RS1960-266-21; 1968-53-14.

Special fund

20. (1) The directors shall create a special fund for the purpose of the reimbursement, in the cases, and subject to subsection (6) to the extent in each case, as they think advisable, of pecuniary losses sustained by a person by reason of the misappropriation or wrongful conversion by a member of the society, since the creation of the fund, of money or other property entrusted to or received by him in his capacity as a member.

(2) Every member except those appointed under section 19 (1) and (2) shall pay to the society in each practice year a sum not exceeding \$75, that may be fixed by the directors as a payment to the special fund until and including the practice year in which the special fund reaches the sum of \$150,000. Thereafter if the special fund falls below the sum of \$100,000 or whatever smaller sum may be fixed by the directors, but not in any event less than the sum of \$75,000, and as often as that occurs, every member, on receipt of notice in writing from the secretary, shall pay in each practice year the sum fixed, and the payments shall be continued for each practice year until and including the practice year in which the special fund again reaches the sum of \$150,000.

(3) If in a fiscal year the special fund falls below the sum of \$25,000, then, in addition to the sum payable under subsection (2), the directors may require every member to pay, and every member shall pay, to the society for the next following practice year and for every subsequent practice year until and including the practice year in which the special fund again reaches the sum of \$25,000 whatever further sum may be fixed by the directors, not, however, exceeding the annual amount provided for in subsection (2), and the payments shall be paid into the special fund.

(4) An amount referred to in subsection (2) or (3) may be varied by members of the society at a meeting of the society if written notice of the proposed variation has been given to all members, but no variation shall be made reducing an amount referred to in subsection (2) or (3).

(5) The special fund is the property of the society and shall be kept in a special savings institution account apart from the other funds of the society. The directors may

invest or cause to be invested the special fund and the proceeds of it in the securities and in the manner they think fit. The special fund shall not be subject to a trust in favour of a person sustaining losses in the manner described in subsection (6).

(6) On complaint in writing made to the society, alleging that a person has, by reason of the action of a member of the society, sustained the pecuniary loss described in subsection (1), the directors may, if in their opinion it is warranted, cause an inquiry to be made into the complaint. If as a result of the inquiry, which shall be made with dispatch, the directors are satisfied that the person concerning whom the complaint was made has, by reason of the action of a member of the society, sustained the pecuniary loss, they may, in their discretion, and on the terms they think fit, pay out of the special fund to the person entitled the whole or a part of the loss, or in their discretion decide that in the circumstances no payment shall be made. No more than \$10,000 shall be paid out of the special fund in respect of the subject matter of any one complaint.

(7) Nothing in this section affects or impairs the powers of the directors or a committee of them under the disciplinary provisions of this Act.

(8) The special fund referred to in this section does not apply to any member of the legal profession practising as a notary public.

(9) A member of the society appointed under section 19 (1) and (2) is excluded from participation in or contributing to this special fund, and this special fund does not apply to complaints from a person alleging that by reason of the action of a member of the society who was appointed under section 19 he sustained the pecuniary loss described in subsection (1) of this section.

(10) All members of the society appointed under section 19 (1) and (2) shall, at the discretion of the Attorney General, furnish and maintain security by way of a bond or by way of deposit of cash or securities in an amount determined by the Attorney General.

1967-31-3; 1977-31-12.

Accounts

21. (1) A member of the society shall keep, in connection with his practice, up to date records showing and readily distinguishing

- (a) all money received and paid for or on behalf of others and the amount of money held on behalf of each other person; and
- (b) money received and paid on his own behalf.

(2) Money received for or on behalf of a client shall be deposited in a trust account in a bank, a trust company registered under the *Trust Company Act* or a credit union approved for the purposes of this section by the Credit Union Reserve Board and designated as a trust account and shall so be designated in the records of the member and of the savings institution.

(3) No money shall be drawn from a trust account except

- (a) money paid to or on behalf of a client from funds that have been deposited in a trust account to the client's credit;
- (b) money required for payment to the notary public for or on account of services rendered to or disbursements made on behalf of a client from money belonging to a client; or
- (c) money paid into the trust account by mistake.

1977-31-12.

Suspension by directors

22. Where a person, committee or servant appointed by the directors to examine the books and records of a member reports that in his opinion there has been an infraction of this Act or the rules and regulations relating to accounts, the directors may immediately suspend the membership of the member pending the result of the inquiry under this section.

1967-31-3.

Audit

23. The directors may order and provide for the audit of a member's books and accounts. Where an audit is sought as a result of a complaint, the directors may require the complainant to pay a reasonable sum to cover the cost of audit. The directors may dispose of the sum in their discretion. Where the audit shows that a member's books and accounts are not in proper order and not kept up to date, the cost of the audit shall, if the directors require, be paid to the society by the member.

1967-31-3.

Discipline

24. The directors shall appoint from among their number a discipline committee. Its quorum shall be not less than 3. In the case of a vacancy the committee may appoint a director to fill the vacancy until the directors themselves do so.

1967-31-3.

Inquiry by discipline committee

25. The discipline committee may inquire into the conduct of members, and for that purpose it shall have all the powers of a commissioner under Part 2 of the *Inquiry Act*. It may provide for the making of preliminary inquiries by a member of the committee or by the secretary.

1967-31-3.

Idem

26. By direction of the directors or on the application of any person, or of its own motion, the discipline committee may, whether a complaint is made or not, inquire whether a member of the society has been guilty of

- (a) misappropriation or wrongful conversion by him of money or other property entrusted to or received by him in his capacity as a member of the society;
- (b) other professional misconduct;
- (c) other conduct unbecoming a member of the society; or
- (d) a breach of a provision of this Act or a rule made under it.

1967-31-3.

Notice

27. If served by mail, a respondent shall be given at least 2 weeks' notice in writing of the time and place at which the inquiry will be held before the discipline committee proceeds with an inquiry. The notice shall set out particulars of the complaint or of the matters to be inquired into. If a respondent is served personally, only 7 days' notice need be given.

1967-31-3.

Appearance

28. A respondent may appear personally or with counsel before the discipline committee, and before the directors, on an inquiry or hearing with respect to him.

1967-31-3.

Legal assistance

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

1967-31-3.

Nonappearance

30. If a respondent fails to attend, the discipline committee may, on proof of service of notice, proceed with the inquiry and, without further notice to the respondent, make a report of its findings or take other action it is authorized to take under this Act.

1967-31-3.

Report

31. The discipline committee shall report its findings on an inquiry to the directors in writing.

1967-31-3.

Action by directors

32. The directors, on receipt of the report and on the notice to the respondent they consider reasonable, may accept and adopt a finding of fact reported by the discipline committee or may review the proceedings and evidence taken by the committee or hear further evidence and may make their findings of fact on them or refer the matter to the committee for further consideration as to the whole or a specific part of it, in which case the above provisions as to notice again apply.

1967-31-3.

Decision by directors

33. The directors, after the notice to the respondent they consider reasonable, shall decide whether or not the respondent is guilty of any of the things which may be inquired into under section 26. If they decide that he is not guilty, they shall exonerate the respondent or dismiss the complaint. If they decide that he is guilty, they may, by resolution passed by at least 2/3 of the directors present, take the following disciplinary action:

- (a) reprimand the respondent; or
- (b) order a suspension of the respondent for the time thought fit; or
- (c) order a cessation of the respondent's membership in the society; and
- (d) order the payment by a party of costs and fix their amount; and
- (e) make an order either on terms or otherwise, as may be just.

1967-31-3.

Qualifications of member of discipline committee

34. The fact that a director is a member of the discipline committee shall not prevent his sitting as a director on the consideration of the committee's report.

1967-31-3.

Temporary suspension

35. The discipline committee, if it thinks fit, may order the suspension of a respondent pending the consideration of its report by the directors.

1967-31-3.

Action on conviction of indictable offence

36. On proof that a member of the society has been convicted of an indictable offence, the directors may, without following the procedure provided above, summarily order the suspension or cessation of the member.

1967-31-3.

Status of suspended member

37. A member of the society while under suspension shall be deemed not in good standing.

1967-31-3.

Action by secretary

38. In every case of suspension or cessation of membership, the secretary shall, unless he is otherwise directed,

- (a) notify the Attorney General of the action taken;
- (b) notify the district registrars of the Supreme Court of the action taken;
- (c) notify the members of the society of the action taken.

1967-31-3.

Action

39. No action lies against a director or a member of the discipline committee or other committee appointed by the directors, or the secretary or an official or servant of the society, for anything done by him in good faith acting or purporting to act under this Act.

1967-31-3.

Appeal

40. (1) If it is alleged that the directors have erred in the disciplinary action taken against a person, an appeal lies to the court.

(2) An appellant shall, within 14 days after the decision or order complained of, give written notice of the appeal to the directors.

(3) On the appeal the appellant and the directors are entitled to appear, adduce evidence and be heard and the court to which the appeal is taken shall hear and determine the matter in dispute de novo. The court may affirm the decision or order, and dismiss the appeal or make another order, as may seem just. The costs of the appeal shall be in the discretion of the court.

1967-31-3

Regulations

41. The directors may make regulations for the carrying out of the purposes of this Act according to their true intent and to meet cases which may arise and for which no provision or no adequate provision is made in this Act or where a provision made is ambiguous or doubtful, and, without limiting the generality of the foregoing, may by regulation

- (a) prescribe the books, accounts and records to be kept by members; provide for their inspection by the directors or their representatives and for their audit;
- (b) prescribe for returns to be made to the society under this Act;
- (c) provide for the filing with the society of certificates from chartered accountants or certified general accountants in the form prescribed by the directors respecting the books and accounts of its members.

1967 31-3

[Note: see also Agent General Act, section 3.]

SCHEDULE

FORM 1

APPLICATION FOR ENROLMENT

CANADA	}	In re the <i>Notaries Act</i> Application of
SUPREME COURT OF BRITISH COLUMBIA		
TO WIT		

I, _____, of _____, in Province of British Columbia, [occupation], hereby make application to be enrolled as a notary public pursuant to the *Notaries Act*, and do solemnly declare as follows

I am a British subject and have resided in the Province of British Columbia for more than 3 years I was born at _____ on [month, day], 19____

I desire to practise at _____, in the County of _____

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath

Declared before me at _____, in the
Province of British Columbia,
[month, day], 19____

A Notary Public in and for the Province of British
Columbia

A Commissioner for Taking Affidavits for British
Columbia

FORM 2

OATH OF OFFICE

I, _____, do swear that I will not make or attest any act, contract or instrument in which I shall know there is violence or fraud, and in all things I will act uprightly and justly in the office of a notary public. So help me God.

Sworn before me at _____, in the }
 Province of British Columbia, } (Signature of Notary)
 [month, day], 19 ____ .

.....
Judge

FORM 3

COMMISSION

ELIZABETH II, by the Grace of God, of the United Kingdom, Canada, and Her other Realms and Territories,
 QUEEN, Defender of the Faith.

To all to whom these presents shall come— GREETING.

KNOW YE that We have commissioned and appointed _____ to be a notary public in and for the
 _____, Province of British Columbia, with all the powers, rights, duties, privileges and
 emoluments by law attaching to the said office of notary public.

Given in Our Supreme Court of British Columbia [month, day], 19 ____ .

.....
Registrar

[SEAL OF THE COURT.]

RS1960-266-Sch.