

BUSINESS

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Law Society tightens rules over real estate activities

B.C. lawyers see some positive results from a fraud that could involve \$50 million

BY WYNG CHOW
VANCOUVER SUN

THE LAW | The shenanigans of disgraced Vancouver lawyer Martin Wirrick have resulted in changes to the rules governing how B.C.'s legal profession handles real-estate transactions. Lawyers are now required to report to the Law Society of B.C. the failure of a lender to provide a registerable discharge of mortgage within 60 days of the closing of a property transaction.

The new rules also require lawyers to report the failure of another lawyer, or a notary, to provide satisfactory evidence that he or she has filed a discharge at the B.C. Land Title Office within that 60-day period.

This whistle-blowing is due five business days after the expiration of the 60-day limit. Called the "30-0 rule," the new provisions give financial institutions 30 days after mortgage repayment to issue a

discharge, then the vendor's lawyer (or notary) would have a further 30 days to register the discharge, allowing new mortgages to fall into their proper place and giving clear title to the new property owner.

Vancouver lawyer Kevin MacDonald said that in light of Wirrick's fraudulence acts the new measures are designed to sharply reduce the chance of further damage occurring as a result of lawyers breaching their undertakings to perform certain duties.

"There is no doubt that Martin Wirrick and his abuse of undertakings has significantly hurt the reputation and pocketbook of the legal profession as a whole," said MacDonald, of Clark Wilson, who writes commentary on legal issues. "B.C. lawyers will be paying for years to come. However, the legal community has responded quickly and, as a result, the damage to the public will be minimized and public confidence will

hopefully be quickly restored. In fact, there have been some positive results emerging from the ordeal, primarily the tightening-up of real-estate transaction timelines, the creation of an industry 'watchdog' and the increased transparency of undertakings in respect of mortgage discharges.

The primary objective is to compile a database regarding the financial industry's response time to the processing of mortgage discharges.

"Lengthy periods of time between closing dates and the dates when mortgages are sometimes discharged contributed significantly to Wirrick's ability to carry on his scam without detection for so long.

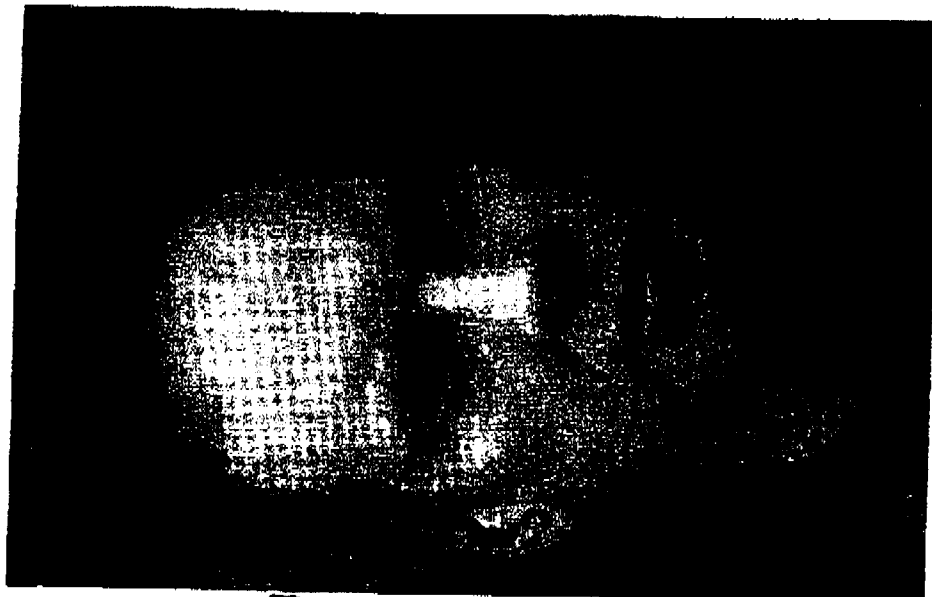
Last December the law society disbarred Wirrick for professional misconduct in connection with his role in the largest such fraud in Canadian history. Wirrick admitted receiving millions of dollars from people purchasing properties owned by his developer client, Bersem Gill, or lending money to finance Gill's projects. In some cases, Wirrick provided his undertaking to use the funds

to pay out and discharge prior encumbrances, but failed to do so. In other cases, he fraudulently discharged mortgages, leading new lenders into the mistaken belief that the properties were clear title. The net result is that there are dozens of purchasers and lenders who have advanced funds but have uncertain title or charges on these properties. The law society has set up a compensation fund to pay all valid claims, expected to exceed \$50 million.

Meanwhile, Vancouver police are continuing what they say is the largest commercial crime investigation in the force's history.

The new rules adopted by the law society apply to property transactions that closed on March 1 or later. In addition to ordinary mortgages, they are applicable to debentures and trust deeds containing a fixed charge on land, or an interest in land.

Details of the changes are outlined in the law society's newsletter, The Benchers' Bulletin, and accessible through the society's Web site, www.lawsociety.bc.ca.



Former lawyer Martin Wirrick's activities sparked changes. GLENN BAGLO/VANCOUVER SUN FILES

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Law society's special fund provides payouts to victims

warded the money to Whirick on his promise to use the proceeds to pay out prior mortgages and register their interests on title, in most cases in first position.

Instead, Whirick — working in concert with Vancouver developer Tharson Gill and others — diverted the funds for other purposes and failed to register their interests in the proper position. If at all, leaving multiple lenders fighting for the same security interests.

The society faced a huge loss of professional credibility due to Whirick's failure to live up to his undertakings. Next to stealing from a trust account, this probably ranks as the most heinous of lawyer sins.

Victims, meanwhile, were facing the prospect of endless litigation as they sought to establish who had an effective charge on which property.

So the society, to its credit, stepped up to the plate and agreed to make good on all valid claims. At last count — and this will give you an idea of how enormous the fraud is — the claims total \$46 million.

Whirick has been disbarred and

has declared personal bankruptcy. He is working at Koko's Government Pet Foods in North Vancouver where, according to his bankruptcy filing, he is making \$1,500 a month.

The latest edition of the law society's newsletter, *The Borrower's Bulletin*, describes the circumstances of the initial claims to be compensated. The details are complex, but what is clear is that Whirick helped his cohorts arrange loans after loan on the same properties, enabling them to extract an amount of cash equal to many times their actual value.

The Bulletin says that between 1999 and 2002, Whirick represented a "Mr. G" (a thinly disguised reference to Tharson Gill) and as a result identified only as "S" in the mortgages and venturing into three adjacent properties in East Vancouver.

The first property was purchased in September 1999 for \$350,000 and the second the following month for \$275,000. To finance these deals, "S" arranged to borrow \$200,000 on the first property and \$216,000 on the second from AA Credit Union.

The credit unions forwarded the funds to Whirick on his undertaking to register a first mortgage in his favour on each property, which Whirick did. Then the bankruptcy began.

"S" subdivided the two properties into three separate parcels and obtained approval to build residential units on them. To finance construction, he borrowed \$270,000 from Mortgage Company B, which forwarded the money to Whirick on his undertaking to pay out the prior mortgages and register a new mortgage in its favour on all three properties.

Whirick did not use any of the funds, however, to pay out the first mortgages. So instead of obtaining a first charge, the mortgage company ended up in second position behind the credit union.

In December 2001, "S" borrowed another \$300,000 from "D Inc." which was to suppose to be placed in second position, but some of the proceeds were used to pay out the prior charges, so it ended up in third position.

In following weeks, these additional mortgages were placed on

the properties: A \$270,000 loan in favour of "C Bank," a \$202,500 mortgage in favour of "E Bank" and a \$257,500 mortgage in favour of "F Bank."

In each case, the funds were forwarded to Whirick on his promise to pay out the previously registered mortgages and provide the lender with a new first mortgage charge. None of the funds, however, were used for this purpose.

On March 29, 2002, "S" sold the first two properties for \$375,576 and \$423,000, respectively. In both cases, the proceeds were forwarded to Whirick on his undertaking to pay out and discharge all prior mortgages, which he did not.

The third property was also sold and the purchaser arranged to send the proceeds — the exact amount is not specified, but it was at least \$253,200 — to Whirick on his promise to pay out the prior charges, which he did not.

In summary, all the lenders expected they would have a first charge on the property. The only one that had a valid first charge, however, was AA Credit Union. (The only exception was D Inc.,

which expected to be in second position but ended up in third.) What is extraordinary is that the scheme was bound to collapse and there was no apparent exit strategy for the perpetrators from this web of treachery and deceit in a mystery. Equally mysterious is the fact that most of the money has disappeared.

Vancouver police have launched what they say is the largest commercial crime investigation in the force's history. Four officers have purportedly been working full-time on the case since September. Outside forensic accountants have also been hired to assist.

Still, Acting Inspector Renée Hoffman tells me it will be "some time before we are able to provide any definitive comment" on when the investigation will be wrapped up and the case handed over to Crown counsel. All he would allow is that it would not be concluded by year end.

Why this case would take so long is beyond me. When you get down to the essentials, this is not exactly Air India.

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DAVID BAINES

SECURITIES COLUMNIST

Lawyer Martin Whirick with others, diverted funds for other purposes

The nerve unleashed by the real-estate dealings of Vancouver lawyer Martin Whirick has resulted in the first payouts to victims by the Law Society of B.C.

The society's special compensation fund has approved the payment of more than \$46 million to several unidentified creditors, banks and mortgage companies victimised by Whirick's failure to live up to his undertakings.

In all cases, the lenders for-