

Conduct Reviews – 2023-01 to 2023-18

Publication of conduct review summaries is intended to assist lawyers by providing information about ethical and conduct issues that may result in complaints and discipline.

Accounting and financial obligations

A compliance audit revealed that a lawyer breached several trust accounting rules, including failure to report one potential trust shortage over \$2,500 to the Law Society. The potential trust shortage arose from the lawyer mistakenly signing trust cheques to pay firm expenses, rather than cheques from the general account. The two largest cheques were cancelled before the funds were withdrawn from trust. The lawyer also breached the rules pertaining to the operation of their general account and overall firm recordkeeping. The lawyer failed to remit GST to the Canada Revenue Agency and PST to the BC Ministry of Finance, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. The conduct review subcommittee advised the lawyer that the trust accounting rules are in place to ensure that client funds are always properly dealt with and accounted for in order to protect the public. The lawyer acknowledged that their bookkeeping and office administration were inadequate during the audit period. The lawyer had since hired a bookkeeper to maintain their accounting records and, at the time of the conduct review, had paid the outstanding GST and most of the outstanding PST. The lawyer had made good use of the resources available to support them in dealing with a number of personal and health issues that had contributed to the conduct at issue. CR 2023-01

Trust accounting obligations

Another compliance audit revealed that a lawyer improperly withdrew client funds on five occasions totaling \$203,461.80, contrary to Law Society Rule 3-64. The lawyer also did not immediately eliminate ten trust shortages greater than \$2,500, and did not notify the Executive Director of the shortages and their inability to deliver up trust funds when due. The lawyer failed to record all trust transactions within 7 days and a number of trust reconciliations were not prepared within 30 days of month end. As a result, trust withdrawals were made when accounting records were not current and errors and discrepancies were not identified. The lawyer also made misrepresentations in a Law Society trust report and failed to properly supervise their bookkeeper. The lawyer acknowledged that they failed to properly monitor and administer their trust accounts in accordance with the rules. The lawyer took remedial steps including hiring an accountant and bookkeeper and purchasing a trust accounting software program. The lawyer also implemented new processes with their staff to ensure that the lawyer personally signs off on all trust account reconciliations in accordance with the rules. CR 2023-02

Breach of undertaking

A lawyer breached an undertaking to their co-counsel, in the course of transferring a client file to a different law firm taking conduct of the file. The complainant was co-counsel with the lawyer on a personal injury file where they acted for the plaintiff. The lawyer attended the complainant's office to pick up the file materials, and was provided with an envelope containing a letter which placed them on an undertaking to pay co-counsel \$50,000 in fees for the work performed over the preceding four years. If the undertaking was not accepted, the lawyer was to return the file materials to the complainant. The lawyer did not read the letter at the time they received it and did not realize they were on an undertaking until the complainant's call two weeks later. The lawyer did not comply with the undertaking or return the file materials, and still had not done so at the time of the conduct review, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The complainant advised the conduct review subcommittee that the lawyer's misconduct had affected them in many ways, including a significant economic impact in not being paid for the work that they performed, and an impact on their ability to trust other lawyers. The lawyer was remorseful and acknowledged that they handled the undertaking very poorly. The subcommittee reminded the lawyer of the importance of honouring undertakings and maintaining the trust that other lawyers and the public have in lawyers. CR 2023-03.

Quality of service, honesty and candour, errors and omissions

A lawyer failed to provide the quality of service expected while representing their client in two related litigation matters. In one matter, the lawyer improperly filed two amended Notices of Civil Claim ("NCC") and a Certificate of Pending Litigation ("CPL"), and did not advise the client of a \$4,000 costs order awarded against the client in relation to the filing of an amended NCC and CPL. The lawyer also failed to pay the costs order by the time ordered by the court. In the other matter, the lawyer failed to file a Reply, contrary to the client's instructions, resulting in a default order. The lawyer failed to inform the client of the default order, obtain the client's instructions prior to filing an application to set aside the default order, and advise successor counsel of the upcoming application date. The lawyer also failed to recommend that the client obtain independent legal advice in relation to the failure to file the Reply on time. The lawyer was candid and forthright about their errors and acknowledged that they did not communicate clearly to the complainant about the steps in the litigation files. The lawyer had a very heavy workload at the time, and noted that they could have given the files more attention. The lawyer expressed remorse for their actions and errors and advised of remedial changes, such as reducing their workload and addressing their mental health with a qualified professional. CR 2023-04.

Quality of service

While representing their client in a judicial review application in an immigration matter, a lawyer failed to provide the quality of service expected of a competent lawyer, contrary to rules 3.1-1,

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3.1-2, 3.2-1 and 7.8-1 of the *Code of Professional Conduct for British Columbia* (the “Code”). The lawyer filed the initial immigration application for leave and for judicial review while working from home at the beginning of the COVID-19 pandemic. The lawyer failed to monitor their office mail and as a result, missed a filing deadline to perfect the application. The lawyer did not diarize the file and failed to prepare materials to request an extension to the filing deadline. A few months later, the application was dismissed for failure to file the required materials. The lawyer did not address these errors until the client’s immigration consultant contacted the lawyer asking for an update. The lawyer then submitted a motion to set aside the order dismissing the application and seeking an extension of time to file, and swore an affidavit explaining their errors. The motion was denied. The lawyer admitted that their behaviour was grossly negligent and candidly admitted their misconduct to their client and to the Law Society. The lawyer no longer practises immigration law, and has taken steps to prevent similar occurrences in the future, including implementing follow-up reminders into their practice management software and diligently checking their mail. CR 2023-05

While representing their client in a family law matter, a lawyer failed to ensure that a trial order was promptly drafted, signed by the opposing party and entered with the Court, and failed to respond to numerous communications from their client, the complainant, contrary to rule 3.2-1 and the commentary to rule 5.1-2 of the *Code of Professional Conduct for British Columbia*. At trial, the court ordered the client’s ex-spouse to pay monthly spousal support and payments to support the client’s arrears. After the trial concluded, the client made repeated requests to the lawyer for the order to be finalized and filed. The lawyer did not respond to these communications. Approximately ten months later, the lawyer replied to their client, advising that they had drafted the order and would send it to the ex-spouse to review and sign. However, the ex-spouse refused to sign and return the order. Almost a year later, the lawyer made an application to dispense with the ex-spouse’s signature on the order, which was granted, and the order was then filed. The complainant, who attended the beginning of the conduct review, advised the Subcommittee that the lawyer’s delay in filing the order negatively affected them as they lost the opportunity to obtain financial support from their ex-spouse, as, by the time the order was filed and could be enforced, their ex-spouse was no longer employed. The lawyer apologized to the complainant. The Subcommittee recommended the lawyer take the LSBC Communications Toolkit course. The lawyer no longer takes on cases dealing with property division in family law matters and took steps to address their procrastination issues. The lawyer committed to being responsive to client communications and to documenting their responses. CR 2023-06

While representing members of a family in various matters and while acting as corporate solicitor for the family’s group of companies, the lawyer failed to provide the required quality of service by not making sufficient inquiries regarding the capacity of one of the clients, after their client’s wife suggested further inquiry was warranted, contrary to rule 3.2-1 of the *of Professional Conduct for British Columbia* (the “Code”). The lawyer acknowledged that they

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should have acted on the concern about their client's mental functioning and insisted on receiving medical records proving the client's capacity before continuing in their representation. The umbrella organization that the lawyer had represented subsequently retained new counsel. Following this, the lawyer failed to pay out sale proceeds promptly at the completion of a real estate transaction relating to one of the companies, contrary to rules 3.2-1 and 3.5-6 of the *Code*. The lawyer also failed to provide all client files to the new counsel in a timely manner, contrary to rules 3.5-6, 3.7-8 and 3.7-9 of the *Code*. The new counsel subsequently obtained a court order for the production of the client files. The lawyer explained that their practice was extremely busy, that they failed to act diligently and with urgency in paying out the funds, and lost sight of their obligations. The lawyer acknowledged their misconduct, and moved to a larger firm with a greater capacity to support the lawyer and their busy practice. CR 2023-07

Breach of undertaking

While representing the plaintiff in a contract dispute, a lawyer breached an undertaking to opposing counsel by failing to ensure that confidential documents remained in their personal possession and that no copies of these documents were made, as set out in a confidentiality agreement between the parties, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. In the course of litigation, the defendant offered to disclose confidential financial information to the plaintiff's lawyer to further settlement discussions. Under the terms of a confidentiality agreement, the defendant provided financial materials to the plaintiff's lawyer on the condition that they would be used only for the limited specified purpose agreed to by the parties. The lawyer was provided with and later returned the financial documents to the defendant. A year later, the plaintiff transferred their file to new counsel, and the lawyer had the plaintiff's file sent electronically to the new counsel. The plaintiff's client file had included the confidential financial documents, which it appeared had been copied electronically by a staff member without the lawyer's knowledge and added to the firm's electronic file for the client. The plaintiff's new counsel took steps to delete these financial records. The Subcommittee advised the lawyer that an inadvertent breach of the undertaking was not acceptable, and recommended that the lawyer discuss this incident with the other lawyers in their firm, including how to take appropriate steps to ensure compliance with undertakings. The lawyer now ensures staff are instructed when documents are confidential and not to be copied. CR 2023-08

While representing the seller in a real estate transaction, a lawyer breached their undertakings when they failed to pay out and discharge a second mortgage on title until more than a year after closing, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. There were two mortgages registered to the property and after receiving sale proceeds, the lawyer's office completed the discharge of the first mortgage, however, no steps were taken to discharge the second mortgage. The lawyer signed the undertaking letter not knowing that they had not received the payout statement on the second mortgage. After it was brought to their attention by the buyer's lawyer that the second mortgage had not been paid out, the lawyer immediately

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acknowledged the error and self-reported to the Law Society. The breach was the result of an inadvertent error and the lawyer's over-reliance on their staff. The lawyer has implemented changes and updated their office procedures, including enhancing confirmation of payout amounts, and having regular one-on-one meetings between lawyers and paralegals. CR 2023-09

No cash rule

A compliance audit revealed that a lawyer failed to comply with their obligations regarding cash transactions by accepting an aggregate total of \$14,000 in cash from their client in a criminal law matter and refunding \$8,400 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). The lawyer also submitted incorrect responses on their annual trust report, by stating that they had not accepted an aggregate amount of more than \$7,500 in cash and had not made any refunds after receiving such cash. The client paid the lawyer in three installments: a retainer of \$1,000 and two subsequent payments of \$6,500, which was the estimated cost for the lawyer's representation at a five-day trial. The funds were deposited into the lawyer's trust account. The lawyer subsequently reduced their fee and provided the \$8,400 refund. The lawyer was under the misapprehension that Rule 3-59(5) applied to individual cash transactions of more than \$7,500, not aggregate transactions. Since they had not accepted more than \$7,500 cash from their client at one time, the lawyer did not believe they were in breach of Rule 3-59(5) when making the refund. The lawyer's misunderstanding of Rule 3-59(5) led them to answer "no" to the questions regarding cash transactions on their annual trust report. The lawyer appreciates that Rule 3-59(5) applies to aggregate amounts of greater than \$7,500 and no longer accepts cash payments. CR 2023-10

Client identification and verification rules

In similar, but separate instances, conduct review subcommittees met with lawyers who had acted in transactions for clients they had not met in person and where they failed to confirm their clients' identities according to the client identification and verification rules set out in Part 3, Division 11 of the Law Society Rules (the "CIV Rules").

A compliance audit revealed that a lawyer failed to comply with the CIV Rules by failing to retain an agent to verify their client's identity in a non-face-to-face employment litigation matter, involving a client located in Florida, USA, contrary to Law Society Rule 3-104(5). The client had been referred by a lawyer located in Washington State, USA. The lawyer had not acted for the client previously, and had no agency agreement in place. The lawyer did not meet with the client in person or over a virtual platform over the course of the file. An agreement was reached in the litigation matter, settlement funds were wired to the firm's trust account, and a trust cheque was issued and couriered to the client's address in Florida. The lawyer was not aware of Law Society Rule 3-104(5), which sets out the requirement of retaining an agent to verify client identity when a client is not present in Canada, and is not physically present before the lawyer. The conduct review subcommittee advised the lawyer there is an increased risk when dealing

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with a non-face-to-face financial transaction with a client residing in another country. Failure to properly identify a client puts lawyers at risk of being used by unscrupulous clients for the purposes of money laundering and other criminal activities. The lawyer accepted responsibility for the conduct and implemented new protocols in the firm's intake form, including a specific section for clients that reside outside of Canada, and the related need for an agency agreement any time a lawyer provides legal services in relation to a financial transaction. CR 2023-11

A compliance audit revealed that a lawyer failed to comply with the CIV Rules in a non-face-to-face transaction involving the distribution of estate proceeds, contrary to Law Society Rules 3-100(1), 3-102 and 3-104. The lawyer was retained to represent three beneficiaries together. Two of the clients resided in Ontario, Canada, and one client resided in California, USA. The lawyer did not engage in client verification procedures for any of the clients. The primary instructing client was an Ontario lawyer, who was an employee of the lawyer's family member. At the conclusion of the estate, the lawyer disbursed combined estate proceeds close to \$100,000 to the clients, thereby engaging the "financial transaction" verification procedures in the CIV Rules. The lawyer took full responsibility for failing to obtain client verification, and took steps to ensure the conduct would not recur. The lawyer agreed that the proper course of action is to obtain client verification at the beginning of file if there is any chance it could involve a financial transaction. The subcommittee stressed that the Law Society must take client identification extremely seriously, even in cases that involve inadvertence on the part of a lawyer. The risks of fraud or money laundering activities must be remedied by the strict compliance of all lawyers with the client verification process. CR 2023-12

Another compliance audit revealed that a lawyer failed to comply with the CIV Rules in a non-face-to-face real estate transaction, contrary to Law Society Rules 3-100, 3-102 and 3-104. The lawyer acted for a couple who resided in Australia in relation to the conveyance of their Vancouver property. The clients were referred to the lawyer by a realtor with whom the lawyer regularly worked. The lawyer did not obtain and record the clients' addresses and telephone numbers, or places of employment. The clients met with a Justice of the Peace in Australia to have their signatures witnessed on conveyancing documents; however, the executed documents were rejected by the Land Title Office because the Australian Justice of the Peace was not an acceptable witness. The clients then went to a lawyer in Australia to have their signatures re-witnessed. The lawyer did not have a written agency agreement to verify the clients' identities with either the Justice of the Peace or the other lawyer, nor did they possess documentation related to the clients' identification, and the verification of same. The lawyer was unaware of the requirement to have a written agreement with an agent when clients are not physically present in Canada before the lawyer. The lawyer incorrectly assumed it was sufficient to have the clients sign a document in front of a lawyer or Justice of the Peace. The lawyer took steps to ensure future compliance with the CIV Rules by contacting a Law Society Practice Advisor, who provided a template agent agreement and guidance as to its use. The lawyer acknowledged and

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understood the importance of the CIV Rules in ensuring lawyers are not unwitting participants in money laundering schemes. CR 2023-13

A compliance audit revealed that a lawyer failed to comply with their CIV obligations in relation to a non-face-to-face real estate transaction by failing to verify the identity of three clients, who were located outside of Canada, contrary to Law Society Rules 3-102 and 3-104. In the first matter, the lawyer engaged a notary outside of Canada, who witnessed the client's signature on the real estate documents and the lawyer obtained a notarized copy of their driver's license. However, the lawyer failed to enter into an agency agreement with the notary as required under Rule 3-104(5), because the client was not present in Canada nor physically present before the lawyer at the time the real estate documents were signed. In the second matter, the lawyer obtained copies of two pieces of identification from both clients, which were scanned and emailed to the lawyer. The lawyer witnessed the clients' signatures electronically via video conferencing and noted the client IDs matched their clients' physical appearance. However, the lawyer did not enter into an agency agreement outside of Canada as required by Rule 3-104(5). The lawyer admitted their misconduct and advised that they had not turned their mind to the part of the CIV rules requiring agency agreements in such transactions. The lawyer has taken steps to ensure that this does not happen in the future, including drafting an agency agreement for use by their firm, discussing CIV rules with support staff, and viewing Law Society webinars regarding anti-money laundering measures and the CIV rules. CR 2023-14

Client identification and verification rules / Juricert

A compliance audit revealed that a lawyer failed to comply with the CIV Rules in a non-face-to-face transaction contrary to Law Society Rules 3-100(1), 3-102 and 3-104. The client resided outside of Canada and advised the lawyer that the client's son would provide instructions and funds for the transaction. The lawyer's firm did not meet with the client or enter into a written agreement with the notary who verified the client's identity. The subcommittee advised the lawyer that the CIV Rules are in place to prevent money laundering. The lawyer is aware of the Rules and acknowledged that they were not followed, and indicated they would not be taking on any more offshore clients but will abide by the CIV Rules in the future. The lawyer also disclosed their Juricert password to their legal assistant and permitted the legal assistant to affix the lawyer's digital signature on electronic instruments filed in the Land Title Office using the Electronic Filing System, contrary to their Juricert Agreement and Part 10.1 of the *Land Title Act*, Law Society Rules 3-96.1 and 3-64.1(6) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. Since the compliance audit, the lawyer is the only person who knows the new Juricert password. CR 2023-15

Client identification and verification rules / failure to inquire

In representing corporate lenders, a lawyer failed to fully comply with the CIV Rules with respect to three client matters, contrary to Law Society Rules 3-100 (1)(c)(iii)(A), 3-102(1)(a), 3-

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103, and 3-106 and permitted their trust account to be used in objectively suspicious circumstances and without reasonable inquiries, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia*.

At the time of the transactions, the lawyer believed that their CIV obligations would be met by obtaining the BC Company Summary to ensure that the individual providing instructions was the company's representative and personally meeting with the representative and obtaining a copy of their government-issued photo ID. With respect to the source of funds, the lawyer thought they need only inquire into the entity providing funds to the law firm - they did not realize they were obligated to inquire into the economic activity which generated the funds as well. The lawyer admitted they failed to obtain complete information about the source of the funds and ask fulsome questions to "get to the bottom of things" and obtain the names and addresses of the corporate client shareholders as required by CIV Rules. As soon as the lawyer learned of the Law Society's concerns related to the transactions, they made further inquiries of the clients and withdrew from the matters. The lawyer has since taken a number of steps to ensure that, prior to commencing any work for a client, they have an adequate understanding of the nature of the transaction and the source of the funds. If the client is unable to provide such proof, the lawyer will withdraw from the matter and not proceed with the financial transaction. CR 2023-16.

Misleading the court

A lawyer represented a client that they were in a romantic relationship with. The lawyer acted for the client in their divorce proceedings even though the Lawyer did not have prior family law experience. The client's ex-husband was represented by counsel. The lawyer misled the court during an *ex parte* court application because he did not take particular care to be accurate and comprehensive in presenting all the facts, contrary to rule 5.1-1 of the *Code of Professional Conduct for British Columbia* (the "Code"). The lawyer also failed to act courteously towards opposing counsel's legal assistant when he sent numerous items of correspondence with demands for an immediate response or delivery of documents when the lawyer knew that opposing counsel was on holiday. Such conduct is contrary to rule 7.2-1 of the *Code* and its commentary. Further the lawyer's personal relationship with his client may have impaired his professional judgment and resulted in him acting contrary to the conflicts guidance set out in rules 3.4-1(e) and 3.4-26.1(a) of the *Code*. The lawyer told the subcommittee that he was dealing with a number of personal stresses at the time, and that he had not realized the extent to which the stress was impacting his judgment, demeanor and interactions with counsel and colleagues. The lawyer has taken positive steps to recognize the impact of mental health on his ability to make good decisions and has learned that he needs to be mindful when communicating on difficult files. CR 2023-17

Juricert

A compliance audit revealed that a lawyer permitted their legal assistant to affix the lawyer's digital signature on documents electronically filed in the Land Title Office, contrary to their Juricert Agreement, the *Land Title Act*, Law Society Rules 3-96.1, 3-64.1(6) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer took over conduct of a real estate purchase for one of his colleagues to gain experience on a conveyancing file. The lawyer asked his legal assistant to assist with the preparation of all necessary steps, including setting up his Juricert certificate and password. The legal assistant used the lawyer's Juricert certificate and password on 16 further occasions. The lawyer admitted that he delegated tasks to his legal assistant without supervision and failed to review the instructions to obtain a Juricert certificate and password. As soon as the conduct was brought to their attention, the lawyer deleted their Juricert certificate and password and obtained a new Juricert certificate and password that only the lawyer has access to. The lawyer assured the subcommittee that they will supervise their legal assistant more carefully, take time to read all documents, and will ensure they have greater support, mentorship and education before beginning to practise in an area of law that is not familiar to them. CR 2023-18