Law Society of British Columbia

Conduct Reviews – 2023-19 to 2023-36

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.

Client ID and Verification

Compliance audits resulted in several similar conduct reviews involving client identification and verification rules set out in Part 3, Division 11 of the Law Society Rules.

A compliance audit revealed that a lawyer failed to comply with the client identification and verification ("CIV") rules in two non-face-to-face real estate transactions by failing to verify the identity of two clients, who were located outside of Canada, contrary to Law Society Rules 3-102 and 3-104. In both matters, the lawyer sent the clients blank attestation forms, with instructions that the forms were to be completed by a notary. However, the lawyer failed to enter into an agency agreement with the notaries, as required by Rule 3-104(5). The lawyer had not previously met or worked with these clients.

The lawyer acknowledged that their conduct was inappropriate and understood that the CIV rules are an essential step to prevent money laundering. The lawyer has implemented new office procedures to ensure compliance with the CIV Rules. When conducting a conveyance with remote clients, the lawyer sends all documents to an agent to obtain the required CIV information, along with a written agreement. The lawyer has reviewed their client identification intake sheets to ensure they are in accordance with the Law Society's Identification, Verification and Source of Money Checklist and took a CLE webinar regarding Law Society anti-money laundering rules. CR 2023-19

A compliance audit revealed that a lawyer failed to comply with the client identification and verification ("CIV") rules in a non-face-to-face real estate transaction by failing to verify the identity of a client located outside of British Columbia, contrary to Law Society Rules 3-102 and 3-104. The lawyer was acting for a company (the "Company") and its instructing individual, AB, in the purchase of a residential property. AB was the sole director, officer and shareholder of the Company. The lawyer verified the Company's identity through a corporate search. The lawyer received a copy of AB's ID by email. The lawyer had never acted for AB or met them in person. The lawyer's paralegal sent a sample attestation form to AB and instructed them to attend before a notary to complete the verification. AB returned the completed attestation form to the paralegal, which was completed by a lawyer located outside of British Columbia. The lawyer failed to put an agency agreement in place with the other lawyer, as required by the CIV rules, and relied on their client's assurance that they met a lawyer who verified their identity.

The lawyer initially believed that they were in compliance with CIV rules and that an agency agreement was not required as the client was in Canada, relying on a previous version of the Rules. The lawyer is now aware of CIV requirements for transactions involving clients within and outside of Canada and has taken steps to fully understand their CIV obligations, including viewing webinars and reading the *Benchers' Bulletin* on this topic. CR 2023-20

A compliance audit revealed that a lawyer failed to comply with the client identification and verification ("CIV") rules in a non-face-to-face real estate transaction, by failing to verify the identity of their client contrary to Law Society Rules 3-102 and 3-104. The lawyer represented the client in an estate litigation matter. The client was an administrator of their father's estate. On three occasions, the lawyer's firm received funds from the distribution of the estate and paid the funds by wire transfer to their client. The lawyer's firm did not request the client's ID until after two of the three transfers were competed. The client emailed the firm a scanned copy of their passport, but this was expired by one month. At no time did the lawyer or anyone from the lawyer's firm meet with the client in person to verify their identity, nor was an agent hired to verify their identity. The client's identity was subsequently verified.

The lawyer admitted to not meeting CIV requirements, and has reviewed the CIV rules thoroughly and their firm has updated their CIV processes. The lawyer now rarely acts for clients in non-face-to-face transactions, and engages agents pursuant to written agreements where a face-to-face meeting or other forms of verification are not possible. The lawyer has assigned a staff member to ensure that identity verification occurs at the time of client intake. CR 2023-21

A lawyer failed to comply with the client identification and verification ("CIV") rules in two client matters by failing to verify the identity of two strata agents, contrary to Law Society Rule 3-102. In both matters, the lawyer was retained by strata corporations to collect overdue strata fees and received instructions from licensed strata agents employed by each strata's management company. The lawyer adequately verified the strata corporations, but did not meet either of the agents in person for the files, or request their IDs.

The lawyer admitted that they failed to verify the identities of the agents and that they were not aware of the requirement to verify instructing individuals. The lawyer recognized the need to keep up to date on rule changes and to seek guidance from resources such as practice advisors, and now obtains verification for instructing agents. CR 2023-22

Client ID and Verification, Improper billing of disbursements

A lawyer failed to comply with the client identification and verification ("CIV") rules by failing to verify the identity of two clients located outside of Canada in a non-face-to-face real estate transaction, contrary to Law Society Rules 3-102 and 3-104. While acting for the plaintiffs in a civil litigation matter, the lawyer also failed to comply with CIV rules by failing to verify the

identity of their five clients, contrary to Law Society Rule 3-102(2), and failed to provide bills containing reasonably descriptive statements of disbursements, contrary to s.69(4) of the *Legal Profession Act* and rule 3.6-3 of the *Code of Professional Conduct for British Columbia*. In the first matter, the lawyer acted for two clients, a father and son, regarding the sale of their property in British Columbia. The clients attended a notary outside of Canada and sent attestation and identification documents to the lawyer. The lawyer failed to enter into an agency agreement with the notary and did not have any direct contact with the notary. The lawyer was not aware of the Rule 3-104 requirement to enter into an agency agreement. In the second matter, the lawyer acted for a family of five in a claim for coverage after a loss caused by a residential fire. The file settled and the lawyer received settlement proceeds into the firm's trust account. The lawyer subsequently issued an invoice for legal fees and two invoices for disbursements. The disbursement bills did not include descriptive statements and purported to bill for disbursements not yet incurred. The lawyer's practice was to track disbursements using a spreadsheet, but their system failed and the lawyer lost track of them, meaning they were unable to provide a reasonably descriptive statement in the two bills. The lawyer also failed to obtain identification of these clients, with two possible exceptions. The lawyer informed the subcommittee that they received drivers' licences for two of the family members, but that the scans were possibly lost during a ransomware attack on their computer. The lawyer did not obtain copies of their IDs at a later date or for the other three family members at any time.

The lawyer advised that they have reviewed the CIV rules, repeated a CIV course and registered for a Continuing Legal Education Society of BC program on this topic. The subcommittee recommended that the lawyer read the *Bencher's Bulletin* and *E-Briefs* to be alert to rule changes and common errors, such as the lawyer's errors in breaching the CIV rules. The lawyer acknowledged they must provide detailed descriptions of disbursements and must have incurred a disbursement before a bill is rendered. CR 2023-23

Conflict of Interest

A lawyer acted in a conflict of interest by preparing a will for a client with terms adverse in interest to the client's wife without the wife's knowledge, in circumstances where the lawyer had previously prepared mirror wills for the husband and wife, contrary to Chapter 6, rules 1 and 7 of the *Professional Conduct Handbook* (now rules 3.4-1, 3.4-2 and 3.4-10 of the *Code of Professional Conduct for British Columbia* (the "*Code*")). In the 1980s, the lawyer prepared mirror wills for the husband and wife. Sixteen years later, the lawyer prepared a new will for the husband, which left the residue of the husband's estate to their two children and nothing to their wife. When advised by the husband that the lawyer had previously drafted the mirror wills, the lawyer concluded that the wife was no longer their client and proceeded to draft the new will. The lawyer did not have a conflict check system in place and solely relied on memory to identify conflicts. The lawyer no longer had copies of the files relating to the wills and did not understand the requirements for the retention and disposal of estate planning files.

The lawyer expressed remorse for their conduct and had not appreciated that they still had obligations to the wife as their former client. The lawyer has reviewed the relevant provisions regarding conflicts of interest and materials including practice resources regarding conflict check systems. The lawyer is in the process of putting a conflict check system in place. The subcommittee recommended that the lawyer review conflicts provisions in the *Code* when approached by a new client or asked to do work by a former client, and attend CLE courses to stay up to date with developments in areas of law they are interested in. CR 2023-24

While working as an independent contractor for two different law firms at the same time, the lawyer breached confidentiality, acted in a conflict of interest, improperly used one of the firm's trust accounts and breached the *Land Title Act* (the "*LT Act*"). The lawyer also failed to inform one of the law firms of their dual employment. The lawyer failed in their obligation to avoid breaches of client confidentiality under rule 3.3-1 of the *Code of Professional Conduct for British Columbia* (the "*Code*") by storing documents prepared for clients at one firm on the other firm's server. The lawyer had an email address at each firm and failed to separate their files, , sending emails from both email addresses, regardless of the firm with which the client in question had a relationship. The lawyer failed in their obligation to avoid conflicts of interest under rule 3.4-1 and Appendix C of the *Code* by handling real estate conveyances for clients of one firm when the opposing party was represented by the other firm. Shared conflict checks were not performed, as one firm was unaware of the lawyer's position at the other firm. The lawyer failed to take steps to ensure the clients were aware of, and acknowledged and accepted, the lawyer acting for both parties, as required by Appendix C of the *Code*. While retained by one firm, the lawyer improperly used the other firm's trust account to deposit funds into trust where the funds were not directly related to legal services, contrary to Law Society Rule 3-58.1. These funds were immediately transferred out to the firm representing the client, but no legal services were performed at the firm where the initial trust deposit was made. In another matter, the lawyer filed a document with the Land Title Office (the "LTO") without having a signed version in their possession, contrary to sections 168.41(3), 168.41(4) and 168.7(1) of the *LT Act*. The lawyer applied their Juricert signature and registered a Form C Modification with the LTO to correct a prior error, but did not have the parties sign the Form C prior to registration. By affixing their Juricert signature, the lawyer misrepresented to the LTO that he had a properly executed Form C modification when he did not.

The lawyer acknowledged that their conduct breached the *Code*, the Law Society Rules (the "Rules") and the *LT Act*. The lawyer was new in his career with little to no mentorship or guidance, and did not understand the rules governing the practice of law in British Columbia. The lawyer will continue with professional development by attending CLE courses, has sought mentorship and guidance from senior lawyers at their current firm, and reviewed discipline decisions and rules, including trust accounting rules. The subcommittee also recommended that the lawyer engage in a yearly review of the Rules and *Code* as a refresher. CR 2023-25

Juricert / Conflict of Interest

A compliance audit revealed that the lawyer disclosed their Juricert password to their assistant and permitted them to affix the digital signature on electronic instruments filed in the Land Title Office ("LTO"), contrary to their Juricert Agreement, Part 10.1 of the *Land Title Act*, Law Society Rules 3.64.1(6) and 3-96.1, and rule 6.1-5 of the *Code of Professional Conduct for British Columbia* (the "*Code*"). The lawyer did not have a personal computer and their practice was to go to their assistant's office where the assistant would type in the lawyer's Juricert password and affix their Juricert digital signature to each document. The lawyer was not aware of the requirements regarding the use of Juricert passwords and digital signatures. In two matters, the lawyer also failed in their obligation to avoid acting in conflicts of interest under rules 3.4-1, 3.4-26.1, 3.4-28, 3.4-34 and Appendix C of the *Code*. In the first matter, the lawyer represented both the buyer and the seller in a real estate transaction. Believing this was a simple conveyance, the lawyer had both parties sign letters accepting that the lawyer was representing them both. However, as the lawyer drafted the Contract of Purchase and Sale for both parties, the matter was not a simple conveyance. In the second matter, the lawyer loaned $257,160.98 to a client, a friend of theirs, without advising the client to obtain independent legal advice ("ILA"). The lawyer admitted that they did not turn their mind to the matter of ILA and should have advised the client obtain this. The lawyer also used their firm's trust account to receive and disburse funds of $141,600 to themselves as part of a loan repayment, contrary to Law Society Rule 3.58.1(1). The lawyer did not realize that this was a misuse of trust account at the time, as it was a personal matter.

The lawyer acknowledged and regretted all of their misconduct, and has taken steps to ensure none of the conduct will happen again, including by reviewing the *Code*'s conflict of interest provisions. The lawyer purchased and has learned to use a computer, and now digitally signs all land title documents. The lawyer is now working part-time and planning on retiring in the near future. CR 2023-26

Conflict of interest

The lawyer failed in their duty to avoid conflicts of interest in three client matters, contrary to rules 3.4-1, 3.4-28, 3.4-29 and 3.4-31 of the *Code of Professional Conduct for British Columbia* (the "*Code*") and Chapter 7, Rule 1 of the *Professional Conduct Handbook* (the "*PCH*"). In two of the three matters, the lawyer failed to advise their client to obtain independent legal advice ("ILA"). In the first matter, the lawyer acted for a client in an immigration matter, and suggested that the client apply for a visa requiring investment and active involvement in a new business. The lawyer prepared a Memorandum of Understanding (the "MOU") between a company and the client. The lawyer was a shareholder and director of the company (the "Company"). Under the terms of the MOU, the Company was to contribute a licence to manufacture and distribute product and the client was to contribute $450,000, with $20,000 due from the client as a deposit

upon execution of the MOU. The client paid the $20,000 by cheque. The lawyer failed to ensure that the client obtained ILA prior to signing the MOU. In the second matter, the lawyer failed to ensure that their client obtained ILA prior to investing in the Company. The client owned a business which had loaned $85,000 to the Company. In the third matter, the lawyer represented a long-time friend in an estate matter. The client was the beneficiary of an estate and the lawyer created a trust to hold the funds received. The lawyer prepared a trust agreement naming the lawyer's child and step-child as beneficiaries, contrary to Chapter 7, Rule 1 of the *PCH*. The client obtained ILA regarding the trust and advised the Law Society that it was the client's idea to add the lawyer's children as beneficiaries. A few years later, the lawyer also arranged for the Company to borrow $65,000 from the client, contrary to rule 3.4-31 of the *Code*. The client signed an acknowledgement that they had been advised by the lawyer to obtain ILA. The client advised the Law Society that the loan had been paid back, with interest.

The lawyer acknowledged their misconduct and will no longer enter into transactions with clients. The lawyer is reviewing the *Code*, beginning with the trust accounting provisions. The subcommittee recommended that the lawyer retain a bookkeeper with experience working with sole practitioners and that the lawyer consider taking a trust accounting course. CR 2023-27

No cash rule

A lawyer failed to comply with their obligations regarding cash transactions in two client matters, by accepting an aggregate total of $12,500 in cash for client retainer fees on each file, and by refunding both clients by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). In the first matter, the lawyer represented their client in criminal case. The lawyer refunded $2,500 via trust cheque, following receipt of a $12,500 retainer. In the second matter, the lawyer represented their client in a civil litigation case. Following receipt of a $12,500 retainer, the lawyer returned $10,111.60 via trust cheque, when $111.60 included on the cheque was received in cash.

The lawyer admitted that they had not understood the cash rule, believing that it was only amounts over $7,500 that had to be refunded. The lawyer had not appreciated that Rule 3-59(5) applies to all refunds when the aggregate total sum paid in cash is $7,500 or more. The lawyer expressed understanding of the reasons and concerns underlying the cash rule and the importance of the Law Society's anti-money-laundering efforts. The lawyer no longer accepts cash payments and viewed the Law Society's anti-money laundering webinar. CR 2023-28

Failure to remit GST and PST, Failure to report and eliminate trust shortages, Failure to properly supervise staff, Filing false or misleading trust report

A compliance audit revealed that a lawyer failed to remit GST and PST to the Canada Revenue Agency (the "CRA"), contrary to rule 7.2-1 of the *Code of Professional Conduct for British*

Columbia (the "*Code*"), failed to report and eliminate trust shortages contrary to Law Society Rules 3-63, 3-64, and 3-74, failed to properly supervise staff contrary to Law Society Rule 3-54 and rule 6.1-1 of the *Code*, and filed an inaccurate trust report. The lawyer failed to remit GST in the amount of $217,483.44 and PST of $165,842.63. The lawyer's firm entered into a payment arrangement with the Ministry of Finance in BC for PST owing since early 2020, and had paid outstanding PST arrears by April 2022. At the date of the conduct review, the firm was still dealing with the CRA regarding the GST arrears. The lawyer also failed to report seven trust shortages over $2,500, and five of these shortages were not eliminated immediately. The firm's chief financial officer (the "CFO") was relatively new and not aware of the Law Society's requirements regarding trust shortages. The CFO did not inform the lawyer or the firm's other partner of the shortages. As a result, the lawyer's 2020 trust report did not identify the trust shortages and the lawyer provided an inaccurate trust report. The lawyer failed to review the firm's trust reconciliations and to treat the trust report with sufficient care.

The lawyer accepted that they and the other partner at the firm were responsible for ensuring that the CFO was aware of the Law Society Rules and that they were followed. Upon learning of the accounting issues, the lawyer accepted responsibility and took steps to provide additional training and resources for staff, and to improve the firm's trust accounting processes. The lawyer's firm has since merged with another firm and has benefited from their accounting resources and policies. CR 2023-29

Breach of undertaking

While representing a new client in a personal injury matter, a lawyer breached an undertaking to pay the transferring firm's disbursements account and to protect that firm's fees, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer informed the client's former firm (the "Firm") that they had been retained to represent the client ("AB") in the motor vehicle accident file. The Firm provided the lawyer with AB's file, along with an undertaking from the lawyer to provide the Firm with a cheque in the amount of $1,105.87 for their disbursements account and to protect the Firm's fee. The lawyer failed to provide payment or to return the enclosures to the Firm. The Firm sent follow-up correspondence to the lawyer regarding the disbursement accounts and the status of the litigation. The lawyer subsequently sent the Firm a cheque in the amount of $187.87. In the cover letter, the lawyer stated that they had only agreed to pay for disbursements, but characterized a loan component on the disbursements account as a disputed item and payable after the file resolved.

The lawyer is now in full compliance with the undertaking. The lawyer understood that undertakings must be strictly complied with, and acknowledged that they paid insufficient attention to the imposed undertakings. The subcommittee encouraged the lawyer to consider training staff about undertakings, and the importance of dealing with them promptly and appropriately. CR 2023-30

While acting for clients in a real estate matter, a lawyer breached an undertaking by failing to pay out funds to a bank for a bridge loan on the maturity date, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer acted for three clients who were selling a property (the "First Property"). The lawyer was referred to handle the sale by a lawyer from another firm ("CD"), who was acting for the purchaser. CD had represented the lawyer's clients (the "Clients") in their purchase of another property (the "Second Property") and had assisted the Clients in obtaining a bridge loan for $131,000.00 plus interest from a bank. The term of the bridge loan was for a one-week period, to provide funds for the Clients to finance the purchase of the Second Property before they received the net proceeds of the sale of their First Property. In order to provide assurance to the bank that the bridge loan would be paid out from the proceeds of sale of the First Property, CD asked the lawyer to sign an undertaking requiring the lawyer to act in accordance with the bridge loan agreement. The lawyer admitted they did not thoroughly read through the undertaking, did not diarize it and did not keep a copy.

The lawyer's office received the sale proceeds for the First Property and requested the bridge loan payout instructions from CD's office. CD's office provided instructions regarding the payout of a separate $16,000 deposit loan financing. The lawyer stated the CD's assistant called this the "bridge loan". At the time, the lawyer did not recall that they had signed an undertaking for the bridge loan, but assumed that they had signed an undertaking to pay out the deposit loan financing. The lawyer paid out the sale proceeds for the First Property, less the principal and interest owing on the deposit loan, to the Clients and failed to deduct and remit payment for the bridge loan from the sale proceeds. Six weeks later, CD's assistant sent the lawyer a letter from the bank requesting the payout monies for the bridge financing. CD provided the lawyer with a copy of the undertaking. The lawyer self-reported their breach of undertaking to the Law Society and to the Lawyers Indemnity Fund ("LIF"). The lawyer also contacted the Clients, but initially got no response. Eventually, the Clients returned some of the funds incorrectly paid to them by the lawyer, but the remaining $50,000 plus accrued interest owed to the bank was not paid back by the Clients, with LIF paying the remaining amount.

The lawyer admitted to acting contrary to rule 7.2-11 and acknowledged that they understood the importance of strict compliance with undertakings. The lawyer is now extremely careful to read all documents thoroughly prior to signing and to retain a copy. The lawyer advised that at the time of signing the undertaking, they were overwhelmed by their workload. The lawyer has taken steps to reduce stress, no longer accepts new files if they are too busy, has more experienced staff in their office, and makes notes of all meetings and phone calls. The lawyer also took a small practice course and is planning to take additional real estate courses. CR 2023-31

While representing clients in a real estate matter, a lawyer breached an undertaking by failing to provide documentation to opposing counsel establishing that they had taken steps to obtain two mortgage discharges within five days of closing, and by failing to use diligent and commercially

reasonable efforts to obtain the executed discharges in a timely manner, contrary to rules 7.2-11, 7.1-3 and 7.2-5 of the *Code of Professional Conduct for British Columbia*. The lawyer represented the seller and there were two mortgage charges on title to the property prior to closing. The lawyer was placed on three undertakings by the buyer's lawyer ("EF"): to pay out each mortgage; to provide copies of correspondence to EF evidencing the payouts within five days of closing; and to provide evidence of delivery and discharge in a timely manner. In preparation for closing, the lawyer's assistant requested payout statements from the two lenders, and upon receipt of those statements, prepared trust cheques to be sent to each lender. One of the cheques was not sent. The lawyer did not have an explanation for this. Two months later, the cheque was sent to the lender, along with a bank draft for the additional accrued interest amount. While the mortgages were paid out, the lawyer failed to follow up with the lenders to ensure that the mortgages were discharged. One month later, EF wrote to the lawyer seeking an update as they had not received information regarding the mortgage payouts and both mortgage charges remained on title. Eight months later, the lawyer's assistant noted that one of mortgages was still not discharged. The discharge was finally obtained by the lawyer 22 months after closing, and 19 months after the mortgage was discharged.

The lawyer acknowledged the seriousness of their actions and admitted that they should have, but did not, self-report the breach of the undertaking. The lawyer admitted that they relied too much on their assistants to follow up on the discharge of the remaining mortgage, and did not follow up with them to ensure that tasks were completed. The lawyer acknowledged that they were mistaken in assuming that the banks would discharge the mortgages once they were paid out. The lawyer has taken steps to improve the management of their practice, including better communication with staff and improved note-taking. The lawyer has also hired additional staff, limits their real estate conveyancing files to a manageable amount, and hopes to hire an experienced real estate practitioner to assist with their work and to provide mentorship. CR 2023-32

While representing the seller in a real estate conveyance, a lawyer breached an undertaking to a notary representing the purchaser by failing to use diligent and commercially reasonable efforts to obtain a release from a mortgagee in a timely manner and by failing to promptly file the executed release when received with the Land Title Office (the "LTO"), contrary to rules 2.1-4(b), 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The notary placed the lawyer under the following undertakings: to pay to the lender the amount required by its written payout statement and legally obligate the lender to provide the release of its mortgage registered against the property; to obtain the release in a timely manner; to register the release in the LTO; and to provide the notary with registration particulars. The mortgagee provided the payout statement to the lawyer who paid out the mortgage on the same day, and the sale completed. The lawyer did not put the lender on a trust condition to provide a release of its charge in registrable form within a reasonable period of time when paying out the mortgage. The lawyer made no efforts to obtain a release, despite being placed on an undertaking to obtain a

release in a timely fashion, until after the lawyer received follow-up emails from the opposing party's representative. When the lender provided an executed release, the lawyer failed to file it with the LTO. It was not until almost one month after the lawyer was advised of the Law Society complaint that the release was filed and the mortgage discharged.

The lawyer expressed that they understood the importance of undertakings, particularly in real estate matters, and took full responsibility for the failure of their office systems and oversight in this matter. The lawyer has hired an experienced conveyancer, and committed to reviewing the firm's bring-forward system to ensure they meet obligations regarding timelines and undertakings. The lawyer also agreed to set up monthly meetings with their conveyancer to review files. CR 2023-33

Misleading representation

While representing a client in a family law matter, a lawyer made misleading representations to Supreme Court Scheduling that they were prepared for trial when they were not, contrary to rules 2.1-2, 2.1-4, 3.1-2 and 5.1-5 of the *Code of Professional Conduct for British Columbia*. The manager of Supreme Court Scheduling ("Scheduling") emailed the lawyer and the opposing counsel regarding readiness for trial that was set to proceed in 11 days. The lawyer advised Scheduling that the trial was ready to proceed and that there was no prospect of settlement. Four days before the trial was set to begin, the lawyer advised Scheduling, their client and opposing counsel that the lawyer was not prepared for trial. A last minute Judicial Management Conference ("JMC") occurred the following day. The judge awarded costs on a solicitor and client own basis for the eight days leading up to the JMC and for the JMC, payable by the lawyer personally, for making misleading representations regarding their readiness for trial.

The lawyer admitted they advised Scheduling that the matter was ready to proceed before checking, but that it would have been greatly prejudicial to their client to proceed. The lawyer was unable to provide further details to the subcommittee regarding what specifically had not been done before the original trial date. The lawyer acknowledged their carelessness, now prepares checklists for all trials, and is looking at setting up a more sophisticated bring forward system in their office. CR 2023-34

Failure to comply with consent order, failure to act courteously, quality of service

While representing their clients in a civil litigation matter, a lawyer failed to comply with a consent order, failed to take steps to have the consent order amended, failed to provide a quality of service without delay and failed to respond promptly to communications from opposing counsel, contrary to rules 2.1-2, 2.2-1, 3.1-2, 3.2-1, 7.2-1, and 7.2-5 of the *Code of Professional Conduct for British Columbia* and their commentaries. The lawyer was retained by a couple to commence an action against their daughter and son-in-law to recover a portion of the sale

proceeds of a property the family had previously purchased together, and then sold after the daughter and son-in-law separated. The consent order directed the payout of the sale proceeds and the sales proceeds were provided to the lawyer on an undertaking that the lawyer payout the proceeds as set out in the consent order. The lawyer disbursed the majority of the funds in accordance with the consent order, but did not make a payment of $14,000 to the client's son in law ("GH"). GH and GH's counsel followed up with the lawyer regarding the lack of payment to GH on several occasions. The lawyer first requested a payout statement from GH, who pointed out that the consent order did not require GH to provide any documents before the funds could be paid. The lawyer later advised that they could not make the payment because of a mistake in GH's account number in the consent order. The lawyer took no steps to correct the consent order and only made the payment after receiving a court application from GH's lawyer to amend the consent order.

The lawyer acknowledged that they did not promptly attend to paying out $14,000 to comply with the undertaking and the consent order, and that they could have addressed the issue more quickly than the seven months it took before making the payment to GH. The lawyer advised the subcommittee that they viewed a payout statement as being necessary to comply with the consent order and later, they held the view that they could not comply with the consent order because the account number was listed incorrectly. The lawyer is currently suspended from practising law and will be supervised on their return to practice. CR 2023-35

Failure to remit GST and PST, Unsatisfied monetary judgment

A compliance audit revealed that a lawyer failed to remit GST and PST in full and on time to the Canada Revenue Agency (the "CRA") and the Ministry of Finance for British Columbia (the "MFBC"), contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*, and failed to report an unsatisfied monetary judgment to the Executive Director within seven days, contrary to Law Society Rule 3-50. The lawyer's firm owed $47,999.49 in GST in early 2022, and has been making monthly payments towards GST arrears to the CRA since mid-2022. The lawyer's firm owed $122,263.69 in PST in late 2021, and has been making monthly payments towards PST arrears to the MFBC since early 2022. In late 2021, the MFBC filed a certificate against the lawyer's firm with the Supreme Court of British Columbia for PST arrears. The lawyer admitted that they did not report the certificate to the Law Society as they did not realise that it carried the same force and effect as a judgment or order.

The lawyer took accountability for their error, and admitted that their challenge in meeting financial obligations was due to cash flow issues and other financial setbacks after the COVID-19 pandemic. The lawyer acknowledged that during the period of financial hardship they attended to making lease payments, keeping their support staff paid and remitting payroll deductions, but did not have the funds to satisfy taxes due. The lawyer told the subcommittee that they were not currently up to date with their monthly payments of GST arrears, but were

keeping the CRA informed as to their situation. The lawyer now has regular meetings at their firm to review accounts receivable balances and budgeting. The lawyer worked with a business coach for a year and the subcommittee suggested that the lawyer consider continuing to work with a coach to assist with managing their business and organizing the firm's finances. CR 2023-36