Law Society
of British Columbia

Conduct Reviews – 2024-01 to 2024-26

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.

Breach of undertaking

A lawyer acted for the buyer in a real estate transaction. The parties jointly agreed that the lawyer would hold back $20,000 from the purchase price until a specified deadline to cover a potential special levy pertaining to work the strata corporation required to be completed. After the deadline, the lawyer would either pay out the holdback to the strata corporation if a levy was charged by the strata corporation, with any remaining balance to be paid to the seller, or, if a levy was not charged by the specified deadline, the lawyer would pay the full $20,000 to the seller. The lawyer provided an undertaking to that effect. Three months before the specified deadline, the lawyer returned the funds to their buyer clients, contrary to the undertaking as regards to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer relied on confirmation from their conveyancer that a levy had been charged, but that information was inaccurate as the strata corporation had voted against charging a special levy. In any event, the funds were paid out three months prior to the deadline. The lawyer acknowledged their error and accepted full responsibility. At the time of the undertaking, the lawyer was new to practicing law in BC and going through personal life stressors. The subcommittee discussed the significant importance of undertakings in the successful operation of many types of legal transactions, especially in real estate, and emphasized that the profession and the public must be able to rely on the lawyers who give them. The lawyer advised that the conduct review had been a positive experience overall and stated that they had a better understanding of the importance of undertakings and lawyers' obligations going forward. CR 2024-01

A lawyer breached an undertaking while acting for the respondent in a family matter. An arbitration took place and the respondent was awarded $429,506.87 (the "Award"). The opposing lawyer forwarded the Award to the lawyer on their undertaking to holdback $200,000 in trust until an outstanding property matter had been dealt with. The lawyer deposited the Award funds into trust and subsequently permitted disbursement of the funds before the property issue was resolved, leaving a balance of $95,295.96 in trust. This was in breach of their undertaking, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer took responsibility for the error, and explained that they had forgotten about the undertaking due to the firm's consolidation of virtual records and inadvertent deletion of a file note about the undertaking. The lawyer had also experienced personal frustration in the matter, which caused them to be less careful. The lawyer has since withdrawn as counsel on the matter

and said they would be more cautious on matters in the future if they feel similar frustration. The subcommittee acknowledged the lawyer's diligence in identifying and implementing systems to ensure compliance with undertakings and provided them with detailed guidance on best practices respecting fulfillment of undertakings. Such guidance included ensuring that undertakings are clear and can be fulfilled at the outset, and that they are recorded in the firm's systems immediately upon acceptance. CR 2024-02

A lawyer acted for the sellers on the sale of new residential housing. GST was applicable to the sale. The lawyer gave an undertaking to remit the amount due for GST to the Receiver General directly if the sellers were not GST registrants, and provide proof of payment to the buyers. After the completion of the sale, the lawyer issued two cheques to the sellers, one for the net sale proceeds, and one for the GST amount. However, the sellers were not GST registrants and so the payment to the clients was in breach of the undertaking, and contrary to a lawyer's obligations under rule 7.2-11 of the *Code of Professional Conduct for British Columbia.* The notary acting for the buyers followed up with the lawyer for proof of the GST payment. At that point, the lawyer realized their error. The sellers returned the GST funds to the lawyer, and the lawyer issued a cheque to the Receiver General. However, the sellers insisted that they wanted to remit the funds themselves, and provided the lawyer a screenshot of their bank statement showing the payment. Upon receipt, the lawyer cancelled the cheque he had issued to the Receiver General, and forwarded a copy of the sellers' screen shot to the buyer's notary as proof of payment. The notary advised that the screen shot was not satisfactory proof that the payment had been received by the Receiver General and applied to the account. It later turned out that the sellers had not successfully remitted the GST as the screenshot seemed to indicate. Eventually, the notary reported the lawyer to the Law Society. After the report, the lawyer remitted the GST payment to the Receiver General directly and provided proof of payment. This occurred approximately seven months after the sale completed.

The subcommittee advised the lawyer that his conduct was inappropriate and in breach of the undertaking, and that the lawyer they should have acted more promptly to remedy the breach. The lawyer acknowledged their error and readily admitted to breaching the undertaking. The lawyer noted this was their first undertaking to remit GST and acknowledged they should have paid more attention to it. The lawyer also acknowledged they should have taken more urgent action to satisfy the undertaking when the issue was raised and that they ought to have been more responsive to the buyer's notary. The lawyer has since engaged in staff training regarding undertakings and has altered their practice to ensure that a breach of undertaking will not occur in the future. CR 2024-03

A lawyer breached two undertakings on two real estate conveyances. In the first instance, while representing their client in a property purchase, the lawyer breached their undertaking to opposing counsel by failing to pay out and discharge a land tax deferment charge on title with

mortgage proceeds, having regard to rule 7.2-11 of the *Code of Professional Conduct for British Columbia* (the "*Code*"). The lawyer's client acquired bridge loan financing from a mortgage company to complete the property purchase ("Property A"). The mortgage company secured its financing by way of a mortgage against Property A and against another property owned by the client ("Property B"). The purchase of Property A completed; however, the deal for Property B collapsed. Two months later opposing counsel followed up with the lawyer regarding the discharge of the land tax charge on title. The lawyer replied that the plan had been to pay off the land tax deferment charge following sale of Property B; however, that deal had collapsed. The lawyer further advised that Property B was being sold and that the deal would close in two weeks, following which the land tax deferment charge would be paid. Opposing counsel advised the lawyer that failing to use the proceeds from the mortgage company to pay the land tax deferment charged registered against Property A amounted to a breach of an undertaking. Shortly thereafter the sale of Property B completed and the land tax deferment charge on Property A was discharged from title.

The second breach of undertaking occurred when the lawyer represented their clients in the purchase of a strata unit. The lawyer breached their undertaking by failing to pay the $100 move-in fee to the strata on the completion of the conveyance, having regard to rule 7.2-11 of the *Code*. The lawyer also failed to respond to the strata's correspondence on four occasions regarding their undertaking, contrary to rule 7.2-5 of the *Code*. After Law Society staff contacted the lawyer and advised of the complaint, the lawyer paid the move-in-fee to the strata. The lawyer acknowledged their wrongdoing and hired additional support, established a mentorship relationship with a senior lawyer, and implemented checklists and bf systems in their practice. CR 2024-04

Following a compliance audit, a lawyer provided an undertaking to the Law Society regarding their trust account. The undertaking included provisions that the lawyer would not deposit, and would not allow anyone else to deposit, funds to trust, and that they would not accept any further trust funds as defined in the Law Society Rules. However, funds were deposited to trust, contrary to the undertaking on three occasions. The first was the result of a banking error which the lawyer corrected the next day. The second occurred when the lawyer's client overpaid spousal support and a lawyer acting for the Family Maintenance Enforcement Program sent a cheque made out in trust to the lawyer to return the overage. The lawyer deposited the cheque into his trust account and issued a trust cheque to the client on the same day. The third instance occurred when the lawyer received funds from a client to pay for a private investigator. The lawyer deposited the funds into trust and then issued a cheque in the same amount to the private investigator. The lawyer reported the first two deposits in their annual trust report. The third was discovered during a Law Society investigation. The lawyer admitted that they exercised "bad judgement" and acknowledged that they should have contacted the Law Society over the spousal support refund matter and had the client pay the private investigator directly. The subcommittee stressed the fundamental importance of undertakings being clearly made and scrupulously

followed in the future. The subcommittee agreed that the first deposit was due to an inadvertent bank error that the lawyer was not responsible for, and would not amount to a breach of the undertaking. However, the other two deposits were in breach of the undertaking having regard to a lawyer's obligations under rules 2.1-4, 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer has now closed their trust account and has committed to strictly complying with their undertakings in the future. CR 2024-05

A lawyer breached an undertaking to the Law Society of British Columbia (the "Law Society") not to engage in the practice of law by acting as General Counsel and providing legal services to an Alberta corporation, while entitled to receive financial remuneration for the legal services, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia* and Rules 2-3, 2-5 and 2-6 of the Law Society Rules.

In 2014, the lawyer signed an undertaking not to practice law. In 2019, the lawyer began to work as an in-house lawyer for a small Alberta company, providing both legal and secretarial services, without applying to be released from the undertaking to the Law Society. The lawyer admitted to practicing law without a license for 23 months between 2019 and 2021.

The lawyer fully admitted their misconduct and took full responsibility for their actions. They stated they had been under the false assumption that working in-house and not requiring insurance meant they did not need to be licensed to practice law. CR 2024-06

The lawyer breached an undertaking, first by failing to discharge a second mortgage on the vendor's title and second by failing to provide the purchaser's counsel with payout documents within five days of the completion, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer had mistakenly assumed that funds sent from the bank included the payout funds for both mortgages on title. Meanwhile, staff transitioning lead to the file "slipping through the cracks" and the payout documents were not forwarded within five days. The breaches went undetected for almost one year. When discovered, the lawyer notified the purchaser's counsel, took immediate steps to remedy the breach, and self-reported to the Law Society. The lawyer explained how their firm has made changes to their office procedures to ensure undertakings are monitored and fulfilled. CR 2024-07

A lawyer breached an undertaking on a matter involving the funding of a loan in a real estate transaction. The lawyer acted for the borrowers and covenantors and opposing counsel acted for the lender. The loan was to be secured by way of a registered first mortgage against two properties. The lawyer had undertaken to hold back sufficient funds from the mortgage proceeds and to attend to the payment of the outstanding property taxes and utility payments on the two properties. The lawyer did not attend to the payments and did not hold back funds from the mortgage proceeds. Instead, the lawyer had relied on the advice of the borrowers and covenantors who had provided them with receipts indicating the taxes and utilities had been paid,

when in fact they remained outstanding. This was a breach of their undertaking, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer admitted the breach of undertaking and stated that they would not undertake real estate transactions until they completely understood the legal steps required in facilitating such transactions. They acknowledged that they should not place undue trust in clients. The subcommittee advised them to be scrupulous in the conduct of their practice in order to avoid future similar instances. CR 2024-08

In two matters, the lawyer breached undertakings contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia* (the "*Code*"). In the first matter, the lawyer failed to discharge the seller's mortgage on title approximately two years after the closing of the sale, contrary to the undertaking that they would discharge the mortgage within a reasonable time period. The undertaking also included that the lawyer would provide registration particulars of the discharge to the buyer's notary within a reasonable time – however, the lawyer failed to respond to correspondence from the notary, contrary to Rule 7.2-5 of the *Code.* In total, over a two-year period, the notary made approximately 16 requests for information on the status of the discharge, but the lawyer's conveyancer responded on only a couple occasions saying there was no discharge on file and that it was being requested. In the second file, the lawyer failed to holdback $30,000 from sale proceeds pending the transfer of title from a prior owner, contrary to their undertaking to hold those funds in their trust account until the home was legally transferred to the buyer. On discovery, the lawyer reported their breach of undertaking to the Law Society.

In relation to both matters, although the lawyer cited staffing issues and overreliance on the conveyancer, they took full responsibility for the matters and expressed an apology to the notary in the first matter. The subcommittee reminded the lawyer that, whether advertent or inadvertent, fulfillment of undertakings is crucial, and lawyers have a duty under the *Code* to respond within a reasonable time to any communications made to them professionally. The lawyer described to the subcommittee the tightened office procedures they have implemented to address their concerns. CR 2024-09

In acting for a corporation in a real estate transaction, a lawyer breached an undertaking to opposing counsel by failing to provide post-dated cheques prior to filing executed Land Title documents, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*.

The lawyer's client agreed to provide a lump sum payment and post-dated cheques as repayment of a mortgage loan. The lawyer provided opposing counsel with the lump sum payment and some, but not all, of the required post-dated cheques. Opposing counsel provided a signed Discharge of Mortgage and Assignment of Rents ("Form C") to the lawyer on an undertaking that the lawyer not make use of the Form C until the lawyer forwarded all of the post-dated cheques. The lawyer filed the signed Form C with the Land Title Office (the "LTO") before he delivered the post-dated cheques, in breach of the undertaking. Opposing counsel asked the

lawyer to have the Form C pulled from the LTO and reported the lawyer to the Law Society for the breach of undertaking. The lawyer subsequently provided the remaining post-dated cheques and opposing counsel waived the undertaking.

The subcommittee noted that, although the lawyer believed they were on an undertaking to deliver the post-dated cheques, the undertaking was not to "make use" of the Form C. The subcommittee found that, while the Form C was not used to affect a discharge of the relevant mortgage, it was filed with the LTO, which is a "use" in contravention of the undertaking. The subcommittee noted that if there is any uncertainty as to what an undertaking means, lawyers should quickly address that uncertainty. In this case, if the lawyer believed they had not yet "used" the Form C, they should have brought that to the attention of opposing counsel and sought clarification for the next steps. CR 2024-10

Client identification and verification rules

A compliance audit revealed that a lawyer failed to comply with the Law Society's Client Identification and Verification Rules (the "CIV Rules") in a real estate transaction involving three clients and the sale of their jointly-owned BC property. The lawyer did not meet with two of the clients at the time of the transaction, one of whom resided in Japan (Client A). The lawyer attended a video conference with Client A to witness them signing sale documents. The lawyer subsequently received emailed copies of Client A's identification documents. The lawyer did not instruct Client A to take their identification documents to a lawyer in Japan, with whom they would obtain an agency agreement, for verification. The lawyer had been mistaken in the belief that they could verify a client's ID via video conference when the client was not located in Canada. The lawyer also failed to obtain a written agency agreement with the notary who verified the identity of the other client whom the lawyer did not meet. The lawyer acknowledged the need to carefully review conveyance files at all stages of the transaction, and ensure their support staff only send out documents they have approved first. The lawyer was contrite and admitted that their breach of the CIV Rules, in particular Rules 3-102 and 3-104, was serious, as the Rules play an important role in preventing lawyers from unknowingly facilitating money laundering or other illegal activities. The lawyer made changes to their practice to ensure they are compliant on future files involving non-face-to-face transactions. CR 2024-11

Conflict of interest

A lawyer acted in a conflict of interest when they represented both buyers and the seller in a business transaction concerning the sale and purchase of shares in a company that the lawyer also represented. The lawyer did not obtain written consent of each party for the joint representation, having regard to rules 3.4-1, 3.4-2, 3.4-5, 3.4-6, and 3.4-7 of the *Code of Professional Conduct for British Columbia* (the "*Code*"). At the time, the lawyer asked the parties if they wanted separate legal representation but they were content with joint representation; however, this was not documented. In this case, each of the individual parties had

different and competing interests. This was made clear when, at the seller's request, the lawyer removed a non-competition clause which was against the interests of the other parties. Shortly after the seller sold their shares in the company, they opened a competing company. The lawyer agreed that they failed to recognize the conflict of interest in acting for all parties and that this was a significant oversight. The lawyer was motivated by a desire to assist the parties and realized that their friendship with them clouded their judgment. The lawyer learned from this experience and accepted full responsibility for their actions. (CR 2024-12)

Court candour

A lawyer was ordered to attend a conduct review to discuss their conduct while acting for a client in a contentious family law matter, and in particular, their failure to treat the court with candour and to candidly respond to the court's inquiries. The complainant was the opposing party.

The dispute was regarding parenting arrangements for the couple's child. The opposing party had alleged the lawyer's client used cocaine. The lawyer arranged for the client to undergo a medical examination ("IME") in regards to the alleged drug use. The IME included collecting a hair sample from the client and sending it away to have it tested for the presence of cocaine. The opposing side was aware of the IME. Around the same time, the lawyer made an application for various orders, primarily regarding parenting time and child support. The lawyer's application materials included a draft of the IME report, but the examiner was still waiting for the hair test results.

At some point, the client was advised by the medical examiner that the hair test results were positive for cocaine use. The lawyer says the client did not share this information with them. Instead, the client told the lawyer the examiner was going to obtain a different hair sample which would provide results over a longer window of time. The lawyer says they did not confirm this information with the medical examiner.

When the application was heard, the opposing party and the court inquired about the outstanding test results. The lawyer advised that neither they nor their client had received a copy of the results. The application was adjourned pending the results. The lawyer says they later learned the original testing had been positive for cocaine use. The lawyer advised the client to obtain new counsel.

After the opposing party filed a complaint to the Law Society, the lawyer wrote to the Court to apologize for "unintentionally misleading the court". The lawyer admitted they ought to have been more careful, and ought to have confirmed what the client was telling them. The subcommittee advised that the conduct was inappropriate, reminded the lawyer of their duty of candour to the court, and advised that they ought to have taken steps to ensure the information

they were providing to the court was accurate. The lawyer has since shared their experience on this file with other associates to pass along the lesson. CR 2024-13

Ex Parte application / Misleading

During an *ex parte* application for short notice and an application for parenting time, a lawyer drafted and filed materials and made oral submissions that they ought to have known contained false or misleading statements and/or omitted material information, contrary to one or more of rules 2.2-1(c), 2.1-5(a), 2.1-5(f), 2.2-1, and 5.1-1 of the *Code of Professional Conduct for British Columbia*. The Notice of Application, affidavit sworn by the lawyer's client, and a letter from the lawyer that the lawyer filed with the court contained misleading statements regarding the opposing party's willingness to mediate an agreement and omitted the fact that the opposing party was represented by counsel and correspondence outlining the efforts made by both counsel to schedule mediation. When the opposing party's counsel informed the lawyer of their concerns with the content of the application materials, the lawyer did not take steps to revise the application materials, and reiterated the misleading statements at court. The lawyer acknowledged that an *ex parte* application in the circumstances was improper and should not have been made, being an error on their behalf, and also admitted that they should not have presented the misleading information to the court. CR 2024-14

Financial and trust accounting obligations

A compliance audit of the lawyer's practice uncovered non-compliance with a number of their financial and trust accounting obligations. These included failing to: remit GST and PST on time, pay the law firm's rent, remit payroll source deductions, repay several business loans, deposit trust funds into a pooled trust account as soon as practicable on two client matters where the funds were deposited into general, as well as making five trust withdrawals totalling $5,075 where there were insufficient funds to the credit of the clients in trust, failing to immediately eliminate the trust shortages, and failing to report the trust shortages to the Executive Director of the Law Society. Such non-compliance was offside rule 7.1-2 of the *Code of Professional Conduct for British Columbia*, and Rules 3-58(1), 3-64(3), 3-74(1) and 3-74(2) of the Law Society Rules.

The lawyer was extremely forthcoming with respect to the events that led to the conduct and accepted personal responsibility. At the time of the conduct, the lawyer was dealing with the impact of the COVID-19 pandemic on their practice, and the departure of three of the five lawyers at their firm. This resulted in an overwhelming amount of overhead that could not be met. The lawyer chose to withhold payment of the taxes, payroll remittances, rent and loans in order to make payroll and support clients. The lawyer also stated they underestimated the amount of bookkeeping required and has since employed a full-time in-office bookkeeper.

The subcommittee advised the lawyer that their conduct was inappropriate because lawyers must always be able to meet their financial obligations in order to maintain the honour of the bar. The subcommittee also advised that it was inappropriate to use collected payroll remittances and taxes to keep a legal practice afloat. The lawyer has since paid all arrears owing, and has paid off their loan. CR 2024-15

Incivility / Engaging in unlawful conduct

A lawyer in a family law matter (a) imposed conditions on payment owed to the former spouse under a consent order, resulting in the client delaying compliance with the order; and (b) referred to the former spouse of their client as a "pedophile" in an email inadvertently copied to the former spouse, having regard to a lawyer's obligations under rules 2.1-1(a), 2.2-2(a) and 7.2-1 of the *Code of Professional Conduct for British Columbia*. The consent order required payment of funds to the former spouse in exchange for the receipt of shares. The lawyer refused to pay the funds until the opposing side produced executed share transfer documents; however, this term was not included in the consent order. When the lawyer realized the consent order did not contain all the necessary clauses, the lawyer should have sought advice on how to proceed. The lawyer's conduct in attempting to impose conditions not in the consent order without returning to court to address the issue was unethical and unfair to the self-represented former spouse. Further, in an email sent to the client's mother, the client, co-counsel and, inadvertently, the former spouse of the client, the lawyer stated they would not give money to "this pedophile", referring to the former spouse, without the guarantee that the client would get all their shares in the company. The subcommittee advised the lawyer that their choice of language devolved the situation and did not service the file or the client.

The subcommittee highlighted the importance of remaining emotionally neutral on files. The lawyer acknowledged their difficulty detaching emotionally and said they were working on this skill. The lawyer indicated they have changed their practice set up, they are at a new firm and have a more manageable workload. The lawyer has other senior lawyers in their office to discuss matters and is now more cautious. CR 2024-16

Quality of service / Excessive fees

In acting for a client in a family law matter, a lawyer prepared a contingency fee agreement ("CFA") without court approval, that charged an excessive fee, and was unfair and unreasonable, having regard to a lawyer's obligations under s. 67(4) of the *Legal Profession Act*, rule 3.6-1 of the *Code of Professional Conduct for British Columbia* (the "*Code*"), and Rule 8-1 of the Law Society Rules.

The client provided an initial retainer and was subsequently unable to provide a further retainer for continuing work. In response, the lawyer prepared a CFA and the client signed the CFA for 25% of the total settlement received by the client. The lawyer said they recommended the client

obtain independent legal advice ("ILA") regarding the CFA, but there were no notes in the file of the discussion.

The lawyer also failed to provide an adequate quality of service and to respond to communications from the client, having regard to rule 3.1-2 of the *Code*. The lawyer advised the subcommittee that they were instructed not to pursue spousal support or pension division; however, they had no notes concerning these instructions and proceeded to settle the client's claim without consultation with the client. The lawyer did not respond to the client's follow-up calls regarding the settlement, did not set out in writing their view of the case and its strengths and weaknesses, and did not properly document their discussions with the client. The subcommittee expressed concerns regarding the lawyer's understanding of timelines for valuation of real property and the consequences of surrendering spousal support and pension claims too readily, as well as the importance of confirming witness statements directly. The lawyer has taken steps to change their practice and now takes detailed notes and documents their advice in writing. The lawyer expressed a willingness to seek out family law resources and the advice of a senior practitioner in their firm when faced with family law concerns. The lawyer is making efforts through the Law Society Fee Mediation Program to address the complaint by the client that the lawyer charged an excessive fee. CR 2024-17

Quality of service and trust accounting obligations

While acting as corporate counsel to a limited partnership, a lawyer was retained by several, but not all limited partners to assist in replacing the current general partner with an incorporated company. The lawyer failed to provide an adequate quality of service having regard to a lawyer's obligations under rule 3.2-1 of the *Code of Professional Conduct for British Columbia* (the "*Code*") and failed to adequately respond to communications from clients and their new counsel having regard to a lawyer's obligations under rule 7.2-5 of the *Code*. Specifically, the lawyer was not clear on who the clients were throughout the course of the retainer, did not have a written retainer agreement, and failed to properly document instructions received. When the newly incorporated general partner retained new corporate counsel for the partnership and requested transfer of the corporate records, the lawyer did not transfer the records in a timely manner having regard to a lawyer's obligations under rule 3.7-9(b) and (f) of the *Code*. When the lawyer did write to the general partner regarding the records, they failed to copy the general partner's new counsel.

In addition, the lawyer failed to comply with their trust accounting obligations under rule 3.6-10 of the *Code*, and Rule 3-65(7) of the Law Society Rules. The lawyer had received funds from the former general partner's counsel into their trust account. Despite repeated requests from the general partner to transfer the funds to the company's account, the lawyer delayed the transfer and held back monies to cover their legal fees. The lawyer says that the partners instructed them to holdback the funds to pay their legal fees, but the lawyer had no written confirmation of these instructions. The subcommittee advised the lawyer that written documentation of client

instructions, circulated to and signed off on by all parties, would have avoided this issue. The lawyer acknowledged that they should have secured written authorization or a solicitor's lien and that they needed an engagement agreement with the company to authorize payment of the lawyer's account. The lawyer acknowledged their mistakes and was apologetic. CR 2024-18

Supervising staff / Trust accounting rules

A compliance audit revealed that a lawyer failed to directly supervise and adequately instruct staff, having regard to rules 6.1-1 and 6.1-3(n) of the *Code of Professional Conduct for British Columbia*, resulting in 26 cheques not being signed by a practicing lawyer and the firm's accountant/bookkeeper being the sole signatory on the trust cheques that were issued, contrary to Rule 3-64(5)(c) of the Law Society Rules.

The cheques were signed as a result of staff error, despite the firm's efforts at education around the rules. The lawyer advised that the firm had experienced high turnover and new staff were responsible for some of the cheques.

The subcommittee noted that a previous compliance audit found 52 prior trust cheques were not signed by a practicing lawyer, and the firm had promised to ensure that procedures were followed and this error would not happen again. The subcommittee discussed the potential problems that could arise when cheques were issued with only one signature, including that: cheques could be inadvertently delivered to third parties without a lawyer's signature, the firm's susceptibility to fraud could increase, and the increased risk that trust funds could be disbursed before all undertakings and trust conditions had been complied with.

The lawyer acknowledged the error and advised that the firm had put in place a policy that the accountant/bookkeeper must only sign cheques as a second signatory and the signature of the lawyer must be obtained first. The subcommittee was satisfied that this change in procedure ought to prevent the recurrence of the problem in the future. CR 2024-19

A compliance audit revealed that a lawyer failed to directly supervise and adequately instruct staff, having regard to a lawyer's obligations under rules 6.1-1 and 6.1-3(n) of the *Code of Professional Conduct for British Columbia*, resulting in the firm's accountant/bookkeeper being the sole signatory on 26 issued trust cheques, contrary to Rule 3-64(5)(c) of the Law Society Rules. A previous compliance audit conducted four years prior found 52 trust cheques were signed only by the firm's accountant/bookkeeper. The subcommittee reminded the lawyer of the many potential problems that could arise when cheques are issued with only one signature, including the firm's susceptibility to fraud and the risk that trust funds could be disbursed before all undertakings and trust conditions had been complied with. The lawyer acknowledged the error and explained that, after the most recent compliance audit findings, firm staff were again advised of the requirement that a lawyer must sign all trust cheques. Further, the firm had put in

place a policy that the accountant/bookkeeper must only sign cheques as the second signatory – the signature of a lawyer must be obtained first. CR 2024-20

Threatening opposing party

A lawyer attempted to contact the opposing party in an acrimonious family law matter, who was represented by counsel, and left a threatening voice message, contrary to rules 3.2-5, 7.2-1 and 7.2-4 of the *Code of Professional Conduct for British Columbia* (the "*Code*"). The lawyer's client committed suicide. Subsequently, the lawyer called the opposing party and left a voicemail stating that they would have them arrested if the opposing party attended the family business. The lawyer acknowledged they should have contacted the opposing party's counsel to clarify if the opposing party was still represented. The lawyer advised the subcommittee that the client's suicide was very traumatic for them and they recognized the need to establish better boundaries with clients.

The lawyer apologized to the opposing party for their misconduct and advised they are no longer taking on acrimonious family law matters. The lawyer was encouraged to reach out to LifeWorks for support and to contact a bencher or senior family lawyer if the lawyer finds they are too emotionally tied to a situation. CR 2024-21

Trust accounting obligations

A compliance audit revealed that a lawyer permitted three paralegals at their firm to create and authorize four electronic fund transfers ("EFTs") totaling $115,591.63 from their firm's trust account, contrary to Rule 3-64.1(2) of the Law Society Rules. The lawyer was overseeing the EFT process and says they did not realize they personally had to authorize the financial institution to carry out the transfer. The lawyer acknowledged their error and explained that their firm was mistaken in their interpretation of the Rules, and the errors followed a period of staff transition. They had also relied on their trusted relationship with their bank. The lawyer stated that the firm has adopted a process whereby the paralegals no longer have authority to confirm EFTs. Further, the lawyer is no longer involved in the firm's trust account. The subcommittee emphasized the concern that the rule was specifically brought to the firm's attention in 2018 during a previous audit. It emphasized that the Law Society rules are there to safeguard trust accounts and to ensure that EFTs only occur with a lawyer authorizing the transaction. The subcommittee reminded the lawyer that failing to comply with the rules increases the potential for theft which can result in harm to the public. CR 2024-22

A compliance audit revealed that, on two criminal law matters, a lawyer failed to deposit retainer funds into his trust account and instead deposited the funds into the general account, contrary to Rules 3-58 and 3-72(3) of the Law Society Rules. At the time, the lawyer had not delivered invoices to the clients. One of the deposits into general was an error, and resulted in a trust shortage which the lawyer failed to report, contrary to Rule 3-74(2). For the other

deposit, the lawyer did not issue a cash receipt, contrary to Rule 3-70(1). The lawyer indicated that, in both cases, when they received the funds, their services had been provided; they were so engaged in the substantive legal work that they lost sight of the requirements imposed by the Rules. The subcommittee explained that the accounting rules exist to protect public confidence in ensuring transparency in the way that lawyers handle their money and account for their work. Accordingly, they are not mere technical rules, but foundational ones that rest at the centre of the Law Society's public interest mandate. The lawyer was remorseful and accepted it was their responsibility to ensure things were done correctly. The lawyer reviewed various Law Society trust accounting resources and advised that they have established better systems with their bookkeeper, and have committed to weekly meetings with the bookkeeper to ensure compliance with the Rules. CR 2024-23

Trust accounting rules / Suspicious circumstances

A compliance audit revealed that the lawyer permitted the use of the firm's trust account to receive and disburse funds totaling $676,000 where there were no legal services provided by the lawyer in respect to the transactions and the lawyer failed to make and/or record sufficient inquires in the face of suspicious circumstances, having regard to a lawyer's obligations under rule 3.2-7 of the *Code of Professional Conduct for British Columbia* (the "*Code*"), and its commentary. The lawyer said the initial funds they deposited into trust were for the repayment of an unsecured loan from the lawyer's client to three lenders. The lawyer had not provided any legal services with respect to the loan and was merely a conduit for the funds. Two years later, the lawyer made eight deposits into trust relating to the repayment of a different loan made to the same client. In this second set of transactions, the lawyer believed the explanation for using the trust account was that the client feared the payee might deny the payments had occurred if they were not paid through a lawyer. The lawyer says they erroneously believed at that time that it was acceptable to facilitate arm's length transactions for legitimate clients and business transactions. The subcommittee reminded the lawyer that the use of a trust account in this manner, like a bank account, is inappropriate and prohibited under the *Code*. The lawyer now fully understands their responsibilities and that trust accounts can only be used for legal services that are directly provided to their clients. The lawyer has implemented system changes in their office, has increased their personal involvement in the supervision of the tasks that caused problems to arise (as identified in the audit) and has implemented specific staff training on compliance requirements. CR 2024-24

Trust conditions / Failure to respond

In acting for a buyer in a real estate transaction, a lawyer (a) failed to honor trust conditions imposed on them by releasing a deposit held in trust to their client after the real estate transaction failed to complete, contrary to rule 7.2-11 of the *Code of Professional Conduct for British*

Columbia (the "*Code*"); and (b) failed to respond to communications from the seller's lawyer with reasonable promptness, or at all, contrary to rule 7.2-5 of the *Code*.

The lawyer was retained by a client to negotiate an extension to the completion date of the purchase of a property. The lawyer received their client's deposit on the purchase price and held the funds in trust. The funds were subject to trust conditions, which were set out by the client's real estate agent in a letter sent to the lawyer by facsimile and courier. The lawyer said they were unaware of the trust conditions because staff did not bring the facsimile to their attention and there was no cover letter couriered with the cheque. The real estate deal collapsed and the lawyer released the funds to their client, contrary to the trust conditions. The subcommittee advised the lawyer that they ought to have known the funds were subject to trust conditions and ought to have made inquiries to confirm the circumstances in which the lawyer had received the funds.

In addition, the lawyer failed to respond to communications from counsel for the seller with respect to whether they continued to hold the funds after the real estate deal collapsed. Despite the communications from counsel for the seller, the lawyer released the funds to the client.

The lawyer acknowledged their inappropriate conduct with respect to both failing to honour trust conditions and failing to respond to communications. They explained that, at the time, they were working in a small office and were inexperienced with conveyancing. The lawyer agreed they should not have released the deposit to the client. The lawyer has since joined a larger firm that has well-trained staff with supervision systems to ensure materials and correspondence get to the correct lawyer. They are now careful to ensure they respond to correspondence and communications from other counsel promptly. CR 2024-25

Trust reconciliations and trust shortages

A lawyer did not reconcile their trust account on a monthly basis as required by Rule 3-73 of the Law Society Rules ("the Rules"). They later signed a trust cheque for which there were insufficient funds, creating a trust shortage over $2,500, and did not rectify the shortage promptly, as due to the late reconciliations the shortage was not discovered until months later. Rule 3-74 of the Rules requires lawyers to immediately rectify trust shortages and to report shortages greater than $2,500 to the Executive Director of the Law Society. When the lawyer did discover the trust shortage, they did not report it as required. It was subsequently uncovered by a Law Society compliance audit. The lawyer advised the subcommittee that they had fallen behind on their trust reconciliations, and have since hired a reputable bookkeeper and accountant to keep up. The lawyer showed clear remorse for their conduct and covered a large portion of the trust shortage personally. The subcommittee emphasized the importance of implementing fail-safe methods to minimize the chance of errors and recommended the lawyer use printed cheques generated through an accounting system that will alert the lawyer if there are insufficient funds held in trust. The subcommittee also recommended adding Law Society deadlines into the lawyer's calendar so that nothing is missed or late in the future. CR 2024-26