

TO: The Executive Director and Jessica E. Abells

AND TO: [REDACTED]

FROM: Barbara Stanley, KC
Chair of the Discipline Committee

RE: [REDACTED] **Administrative Penalty File No. PE20230002**

Pursuant to Rule 4-60 of Law Society Rules 2015 (the “Rules”), I am satisfied that the breach alleged in the above matter has been established on a balance of probabilities and I am also satisfied that the administrative penalty should be upheld.

The Rule Breached

1. [REDACTED] is alleged to have breached Rule 3-102 (Requirement to Verify Client Identity). A breach of this Rule occurs when a lawyer provides legal services in respect of a financial transaction and is therefore required to verify the client’s identity prior to completing the financial transaction but fails to do so.
2. Based on the information before me, the above elements have been met:
 - (a) [REDACTED] represented a lender, [REDACTED] (“[REDACTED]”), which is an organization that provides economic support services to member First Nations. The matter involved a loan made by [REDACTED] of \$306,000.00 to a group of three borrowers.
 - (b) A partial payout of the loan occurred on April 26, 2022, for the sum of \$180,717.25 (the “Loan Payout”). These funds were deposited by the borrowers into the law firm’s trust account and [REDACTED] was to deposit the Loan Payout into [REDACTED]’s account.

- (c) ██████████ did deposit the Loan Payout into what he believed to be ██████████'s bank account, but what was later to be discovered as the fraudster's or impersonator's account.
- (d) ██████████ had failed to confirm the identity of ██████████. ██████████ was a Director for ██████████ and "██████████" signed the Authorization as an Authorized Signatory for ██████████. The signed Authorization contained the account details and deposit instructions directing ██████████ to deposit the funds in the amount of \$180,717.25 into ██████████'s bank account.

The Facts

3. ██████████ had requested and received deposit instructions by email from ██████████ who was the contact at ██████████ with whom he typically dealt on these matters. She was the Director of Finance for ██████████, and she sent him the original deposit instructions by email. It is believed that sometime between April 5, 2022, and April 25, 2022, a hacker gained access to ██████████'s email account and was intercepting the emails between ██████████ and ██████████ and began impersonating her.
4. On April 26, 2022, the impersonator emailed ██████████, altering the deposit instructions and requesting a wire transfer. ██████████ replied by email requesting additional deposit instructions because his firm did not normally do wire transfers and he advised that he wished to deposit a trust cheque directly into the ██████████'s account. That day ██████████ received an email back from the impersonator with additional information.
5. Due to the fact that ██████████ did find the impersonator's request to deposit the funds into a different bank account unusual, he decided to draft written instructions confirming the deposit information that needed to be signed by an authorized signatory of ██████████. ██████████ prepared a document, titled "Authorization", to be signed by a person at ██████████ who had signing authority, as set out in the Authorization document. It was signed by ██████████, a person who ██████████ knew to be a Director of ██████████. ██████████ emailed

the Authorization to [REDACTED]. It was signed and emailed back to him by [REDACTED], who was actually the impersonator.

6. As a result, instead of depositing the Loan Payout into [REDACTED]'s account, it was deposited, by way of his law firm's trust cheque, into the bank account of an unknown fraudster or impersonator. [REDACTED] had been unknowingly communicating by email with the impersonator and not [REDACTED].
7. At no time did [REDACTED] telephone [REDACTED] or [REDACTED] directly to verify the deposit instructions over the phone, and instead accepted all instructions and the signed Authorization by email.
8. [REDACTED] did not obtain identification documents or verify the identity of [REDACTED], a Director of [REDACTED], who signed the written Authorization document on behalf of [REDACTED]. [REDACTED] had drafted and emailed the document to [REDACTED] as she was his primary contact person. The Authorization set out the new deposit information, which altered the original emailed deposit instructions and required an authorized signatory of [REDACTED] to sign it.
9. [REDACTED] did have client identification documents for [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], as they provided him with instructions on behalf of the client from time to time. [REDACTED] knew [REDACTED], knew he was a director, and knew his signature as it was on file. He did not have his identification because [REDACTED] had never before provided instructions on behalf of the client.

Submissions

10. [REDACTED] submits that [REDACTED] was not instructing him, so the Client Verification and Identification Rules as set out in Rule 3-102 do not apply, because [REDACTED] was not an instructing individual on behalf of the client, [REDACTED]. [REDACTED] submits that, at all times, [REDACTED] was the client instructing [REDACTED] on behalf of the organization [REDACTED]. It was [REDACTED] who sent the emails, [REDACTED] who obtained [REDACTED] signature on the Authorization, and it was [REDACTED] who emailed the signed Authorization back to him. Therefore, [REDACTED], and not [REDACTED], was the

instructing individual on behalf of the client, ██████, within the meaning of Rules 3-98 (1)(b). ██████ had verified the identity of ██████.

11. ██████ submits that by signing the Authorization document, ██████ did not therefore become an individual instructing him.
12. ██████ also submits that obtaining identification from ██████ would not have made any difference in the perpetration of the fraud or its outcome.
13. The Law Society submits that the definition of “client” for the purposes of Division 11 is very broad. Rule 3-98 states:

Rules 3-98 (1) In this division,

“client” includes

- (a) another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and
- (b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction.

14. It is the Law Society’s position that ██████ was a client for the purposes of the Law Society Rules, Division 11 (Client Identification and Verification) because he was in fact an individual instructing ██████ on behalf of ██████ with regards to a financial transaction, and therefore ██████ was obligated to verify his identity.
15. The Law Society submits that, because ██████ found the change in deposit instructions to be unusual, resulting in him to require signed written instructions that were meant to confirm the change in deposit instructions in order to satisfy ██████ that the instructions were indeed the instructions of ██████, that the individual who signed the Authorization on behalf of ██████ became the instructing individual.

Discussion and Determination

16. It is my view that once [REDACTED] decided to require a signed Authorization document confirming the change in deposit instructions, drafting it such that it could only be signed by an Authorized Signatory for the client (instead of [REDACTED] herself), and once he accepted [REDACTED] signature as a proper party to sign that Authorization, the Client Identity and Verification Rules were triggered for the individual who signed the Authorization. As a result, this required [REDACTED] to ensure that he had verified [REDACTED] identity in accordance with the Rules.
17. I further disagree with the submission that obtaining [REDACTED] identification would not have made any difference to what transpired as a consequence of the fraud. This submission cannot be a valid argument for failing to follow the Law Society Rules and for failing to properly identify a client in a financial transaction. One of the important purposes of the Client Identification and Verification Rules is to prevent fraud. In this case, [REDACTED] did not have [REDACTED] identification on file. Had [REDACTED] verified [REDACTED] identity upon receiving the Authorization signed by him, then this fraud ought to have been brought to light and prevented. Following Rule 3-102 would have required [REDACTED] to contact [REDACTED] by phone or email and request all of his contact information, including an identification document from him, which is most often in the form of a driver's license. This would have required [REDACTED] to attend the office of [REDACTED] in person, produce an original document and show it directly to [REDACTED] or a designated staff person. Had direct contact with [REDACTED] occurred, this would have likely resulted in the exposure of the fraud.
18. None of the exceptions set out in Rule 3-59(2) applies to the circumstances of this case.
19. In this review, I also have the discretion to assess a different amount for the Administrative Penalty. However, such discretion should be exercised with care. Administrative penalties must balance fairness with the need to ensure that the penalties represent more than the cost of doing business. I do not find that there are mitigating circumstances that would support the decrease of the fine. Even though this was a very sophisticated fraud operation where the computer system of [REDACTED] was accessed, thereby enabling emails to be sent to

██████████ as if they came from ██████████, there were several red flags that should have resulted in ██████████ calling ██████████ directly and then ██████████ directly. The change in deposit instructions was the first red flag and the Authorization being signed by ██████████, who had never been involved in these transactions before, was a second potential red flag.

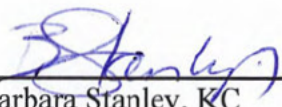
20. ██████████ was alerted by the change in deposit instructions, which he found unusual. Therefore, he did attempt to take what he genuinely believed were additional sufficient steps to confirm the new deposit instructions from the client by drafting the Authorization document with the new banking details, to be signed by an Authorized Signatory of ██████████. It may have been that the Authorization by an authorized signatory for the client was not required at all in these circumstances and a phone call with ██████████ or a Director would have been satisfactory to alter the instructions or perhaps an authorization signed by ██████████ may have sufficed, depending on the arrangements that ██████████ had with ██████████ for taking instructions. However, once ██████████ made the decision to get additional written authorization in the format drafted by him, from a person with signing authority for ██████████, and once he accepted ██████████ as a proper person to sign that legal document, he placed himself in the position of then having to comply with Rule 3-102 and needed to verify ██████████ identity.
21. Furthermore, the amount of the penalty imposed is not disproportionate when weighed against the breach of Rules 3-102, the harm that the Rules are intended to prevent, and to ensure protection of the public. This is the overriding consideration when determining the amount of an administrative penalty.
22. The Law Society has made it a priority to educate lawyers in British Columbia about the rules that are intended to prevent potential fraud and money laundering, and to notify the profession of lawyers' corresponding obligations, especially the client identification and verification rules and the cash rules.
23. The Law Society implemented Rule 3-102 as part of a systemic effort to prevent fraud, money laundering and to prevent lawyers from being willing or unwilling participants in fraud and money laundering schemes. This is for the protection of the public.

Order

Therefore, I order that:

The Administrative Penalty is confirmed and must be paid in accordance with the original notice delivered under Rule 4-59, except that the Administrative Penalty is due on December 8, 2023, by 4 pm.

Dated: November 22, 2023



Barbara Stanley, KC
Chair of the Discipline Committee