

Conduct Reviews – 2023-37 to 2023-46

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.

Dishonesty, Failure to respond, Failure to make inquiries

While representing their clients in a real estate transaction, a lawyer released funds from the purchaser to their clients and failed to make inquiries in suspicious circumstances; failed to correct a misunderstanding of the purchaser's notary and counsel that funds remained in the lawyer's trust account when they had already been disbursed; and failed to respond to opposing counsel's correspondence, having regard to a lawyer's obligations under rules 2.1-2(a), 2.2-1, 3.2-7, 7.2-1 and 7.2-5 of the *Code of Professional Conduct for British Columbia* and its commentary. The lawyer was retained to act for three clients and their company (the "Company") regarding various real estate transactions, including the sale of a property (the "First Property"). The buyer was represented by a notary public. The notary provided the lawyer with documents related to the First Property sale which indicated that the total sale price was \$1,982,000 and that a deposit of \$350,000 had been paid. A week later, the lawyer received an addendum to the contract of purchase and sale from the realtor, without a cover letter or trust conditions, which included a term that the buyer agreed to a full immediate release of a \$800,000 deposit and that the lawyer's firm was authorized to release these funds, "currently held in its trust account, to the Vendors". The next day, the buyer delivered an \$800,000 bank draft to the lawyer's office, payable to the lawyer's firm in trust, also without a cover letter or trust conditions.

Following this, the lawyer's clients instructed the lawyer regarding an order to pay setting out the distribution of the funds. The lawyer wrote trust cheques distributing all of the funds in accordance with the order to pay. At no time did the lawyer contact the notary regarding the addendum, the increased deposit or disbursement of the \$800,000. The notary sent the lawyer a letter confirming that the lawyer held \$1,050,000 in trust for the buyer for the purchase of another property (the "Second Property"). The lawyer was not aware of the Second Property Purchase. The lawyer told the notary that the lawyer's clients took responsibility for the \$1,050,000 received from the buyer and were willing to provide a promissory note to return the funds if the Second Purchase did not complete. The lawyer did not inform the notary that the lawyer held no funds in trust, or clarify that they were not retained to act with respect to the Second Property sale.

The buyer later sent the lawyer an email stating that the \$800,000 bank draft and an additional \$50,000 in borrowed funds were to be used for the Second Property purchase. The lawyer wrote to the notary addressing the buyer's email and confirmed receipt of the \$800,000 bank draft, and provided an undertaking signed by two of their clients that they would return the \$1,050,000 to the buyer if the Second Property purchase did not complete by the middle of the following month.

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After the cut-off date, the notary requested that the lawyer transfer the \$1,050,000 held by the lawyer's firm in trust to the notary immediately. The lawyer did not respond. AB, a lawyer, contacted the lawyer on behalf of the buyer, advising that the Second Property sale had not completed and requested immediate return of the funds. A month later, AB wrote again to the lawyer asking them to confirm whether they held \$800,000 from the buyer in trust. The lawyer did not respond. Subsequently, the buyer filed a Notice of Civil Claim against the lawyer's clients, the Company and the lawyer seeking the return of funds held in trust by the lawyer. For fifteen months, despite numerous communications, the lawyer failed to advise AB that they did not hold funds in trust from the buyer.

The lawyer acknowledged the breach of their ethical responsibilities in not disclosing that they had already disbursed the \$800,000. The lawyer advised that they are no longer doing any real estate conveyancing or mortgage work. The lawyer acknowledged that they were taking on too many files at the time with too little staff support, and now refuses work when too busy. The lawyer made an appointment with the Lawyers' Assistance Program and will consider further counseling and assistance as a sole practitioner. CR 2023-37

Misuse of trust account

A compliance audit revealed that a lawyer permitted their firm's trust account to be used to receive and disburse funds totaling approx. \$1,900,000 in circumstances where the firm was not providing legal services directly related to the majority of the funds, contrary to Law Society Rules 3-58.1(1) and 3-60(4). The lawyer represented a company (the "Company") in the sale of residential properties and in a commercial lending matter, where approx. \$1,400,000 was held in trust owing to Company on completion. Instead of disbursing the excess proceeds directly to the Company, at the direction of CD, the Company's president, the lawyer transferred the funds into their firm's trust accounts where they were held and disbursed. The lawyer deposited a total of approx. \$1,900,000 into the firm's trust account, authorized periodic third-party withdrawals of approx. \$1,800,000 and withdrew \$107,000 in payment of legal fees and disbursements. While some of these payments required legal services to negotiate, others were of a routine nature that should have been dealt with by the client and did not need legal services. The Company did not have an accessible bank account or accounting resources to attend to these payments which resulted in CD requesting that the lawyer hold sale funds and miscellaneous payments made to the Company until such time as CD could address these internal issues, open appropriate bank accounts and hire a bookkeeper.

The lawyer acknowledged their misconduct, has reviewed the Law Society rules on use of trust accounts and no longer holds client funds not related to the provision of legal services. CR 2023-38

Client identification and verification

A compliance audit revealed that a lawyer failed to comply with client identification and verification (“CIV”) rules by failing to verify the identity of two clients in real estate transactions, contrary to Law Society Rules 3-102 and 3-107. In both matters, the lawyer personally knew the clients. The lawyer was able to identify the clients from personal knowledge, but admitted that they did not verify their identities in accordance with Rules 3-102 and 3-107.

The lawyer acknowledged that it was careless to fail to record client IDs on both files, and undertook to verify and copy ID for all clients, regardless of their personal knowledge of a client. The lawyer has acknowledged that their CIV processes were deficient and has taken steps to improve their understanding of the Law Society Rules. CR 2023-39

Another compliance audit revealed that a lawyer failed to comply with client identification and verification (“CIV”) rules by failing to verify the identity of their clients in two litigation matters, one of which was a non-face-to-face transaction, contrary to Law Society Rules 3-102 and 3-104. In the first matter, the lawyer was acting for the defendant, who was a minor, in a litigation matter. The lawyer took instructions from their client’s mother. The client and their mother resided outside of Canada, but the lawyer did not meet them in person or arrange for an agent to verify their identities. The lawyer was not aware of the requirement to retain an agent to verify the identity of clients residing outside of Canada. In the second matter, the lawyer acted for the plaintiff in a litigation matter. The file was transferred to the lawyer from another firm. The lawyer did not have any recollection of whether they or their support staff obtained a copy of their client’s ID during their initial meeting. The lawyer wrongly assumed that their client’s identity had been properly verified at their former firm as the file had a lengthy history. The lawyer’s office later obtained a copy by email of the client’s passport and identity card from their client’s daughter.

The lawyer accepted full responsibility for their misconduct and expressed remorse. The lawyer has taken proactive steps to ensure awareness of the CIV requirements, including conducting a thorough review of the CIV Rules and all practice directives, notices and Law Society checklists. CR 2023-40

A compliance audit revealed that a lawyer failed to comply with client identification and verification (“CIV”) rules by failing to verify the identity of two clients in a non-face-to-face debt settlement matter, contrary to Law Society Rules 3-102 and 3-104. The lawyer’s clients were living in Europe and asked the lawyer to negotiate and settle a debt with a Canadian bank. The lawyer did not meet the clients in person or retain an agent to verify their identities. The lawyer delegated CIV requirements to their office administrator who obtained images of expired driver’s licences from the clients. The clients were referred to the lawyer by another lawyer, but the lawyer did not confirm whether the other lawyer had verified their identities.

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The lawyer admitted to breaching the CIV rules and that they did not follow-up with their staff to confirm that the CIV requirements were properly handled. The lawyer's firm no longer acts for clients outside of Canada unless their identities are verified by an agent, and has implemented the use of checklists that require CIV confirmation of all new clients. CR 2023-41

No cash rule

A compliance audit revealed that a lawyer failed to comply with their obligations regarding cash transactions by accepting an aggregate amount of cash greater than \$7,500 from a client in a family law matter, contrary to Law Society Rule 3-59. The lawyer's firm received four retainers from their client. Three of these retainers were in cash, totaling \$14,500. The lawyer subsequently signed a trust cheque for approx. \$11,500 payable to opposing counsel in trust, which represented full and final settlement of the matter.

The lawyer believed that taking cash in excess of \$7,500 for the settlement and putting it into trust was permissible because they believed this was the same as a "client disbursement." The lawyer confused their entitlement to accept cash for legal fees, taxes and disbursements and their obligation not to take cash in excess of \$7,500 for the settlement. The lawyer acknowledged responsibility for their errors in accepting cash payments over \$7,500. The lawyer read the Law Society's publications regarding Rule 3-59, and now has a clear understanding of that Rule. The lawyer put policies in place at their firm to prevent any further breaches of Rule 3-59. The lawyer has since left private practice and no longer operates a trust account. CR 2023-42

Failure to remit GST, PST and payroll source deductions

A compliance audit revealed that a lawyer failed to remit GST, PST and payroll source deductions on time and in full to the Canada Revenue Agency ("CRA"), contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. The lawyer had cash flow difficulties due to the loss of a significant client and deposited the collected GST, PST and payroll source deductions into their general account and used the funds to maintain their practice.

The lawyer acknowledged their wrongdoing and took steps to rectify the conduct, including taking reduced owner's draws and taking out a loan to pay down their debt. The lawyer owed approx. \$35,000 at the date of the conduct review and planned to satisfy all debts in full following the sale of their practice and, if necessary, the sale of their primary residence. CR 2023-43

Failure to remit GST and PST

A compliance audit revealed that a lawyer failed to remit GST and PST to the Canada Revenue Agency, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. The

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lawyer failed to pay GST and PST in full and on time for two years in a row. At the time of the conduct review, the lawyer was up to date on GST and PST remittances.

The lawyer candidly admitted to failing to remit the taxes. The lawyer offered as an explanation that they had recently become a sole practitioner, and faced issues with the management of their practice due to inexperience. The lawyer now shares an office space with a larger firm, has mentors to reach out to, and has hired a CPA. The subcommittee suggested that it may be helpful for the lawyer to remit GST payments more frequently than annually. The lawyer indicated that they would look into doing this. CR 2023-44

A compliance audit revealed that a lawyer failed to remit GST and PST, contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. The lawyer owed approx. \$28,000 in GST for periods between 2018 and 2022, and almost \$30,000 in PST for periods between 2019 and 2021. The lawyer did not have a bookkeeper for a year as their practice was negatively affected by the COVID-19 pandemic and they were unable to afford a bookkeeper. Without a bookkeeper, the lawyer did the accounting work themselves without an appropriate amount of care and admitted that they did not recognize the importance of meeting their financial obligations to remit GST and PST.

The lawyer admitted that they did not properly set aside monies collected for GST and PST and used the funds for business and other expenses. The lawyer has made payment arrangements with the Canada Revenue Agency and Ministry of Finance and is up to date with these payment schedules. The lawyer has purchased PCLaw to assist them with accounting and now properly sets aside monies for GST and PST. The lawyer does not currently have a bookkeeper. The subcommittee encouraged the lawyer to consider re-hiring a bookkeeper, even on a temporary basis to assist them. CR 2023-45

Failure to report unsatisfied judgments, Filing incorrect trust report

A lawyer failed to report multiple unsatisfied monetary judgments arising from their family law proceedings to the Executive Director and incorrectly reported to the Law Society that there were no judgments rendered against them during the reporting period, contrary to Law Society Rule 3-50(1). The lawyer had been engaged in family law proceedings with their former spouse since 2016 and on multiple occasions, the court made monetary orders for spousal and child support. In addition, an application brought by the Family Maintenance Enforcement Program (“FMEP”) seeking payment of unpaid child and spousal support on behalf of the lawyer’s former spouse resulted in an additional monetary order. The lawyer did not satisfy the judgments within seven days. In the lawyer’s 2020 Annual Practice Declaration, the lawyer did not report the judgments against them. The lawyer was not aware of their obligation to report the judgments because they did not relate to their legal or business activities. CR 2023-46

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The lawyer has since paid the monetary judgments in full and entered into a consent agreement with the FMEP regarding the outstanding payments, resulting in a 2022 consent order. The lawyer was remorseful for their conduct and now understands their obligations in respect of reporting monetary judgments to the Law Society. CR 2023-46