

Conduct Reviews – 2022-01 (January to June)

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

Accounting Obligations

A lawyer failed to maintain proper accounting records, failed to record each transaction involving immigration clients, engaged in improper billing practices, and made misrepresentations to the Law Society during an investigation, contrary to Law Society Rules 3-59, 3-61, 3-63(1), 3-63(2) and 3-68 [now Rules 3-67, 3-69, 3-72(1), 3-72(2) and 3-60] of the Rules and rule 2.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer admittedly did not keep proper accounting records and as a result was not able to produce the records when requested or provide accurate and complete answers to the Law Society's investigation. The lawyer acknowledged responsibility for the deficiencies and for failing to adequately pay attention to general accounting practices and adequately supervise staff. The lawyer has closed the immigration portion of their practice and has less staff to supervise. In addition, the lawyer has taken the Law Society's Small Firms Practice Course, the New Code of Professional Conduct Course Part I and II, the How to Run Your Firm Like a Business Part 1, 2, 3 and Anti-Money Laundering for Lawyers and Law Firms. (CR 2022-01)

In another matter, a lawyer accepted \$230,000 from a client into their own personal bank account in China, then disbursed the equivalent from personal funds located in BC, for the client's investment in a BC company to support an immigration application. Under Chinese law, the client was unable to remove more than \$50,000 of his own funds from China into Canada. The lawyer failed to deposit the client's retainer funds into trust, failed to maintain proper general accounting records, failed to record each transaction involving this client or their business, made misrepresentations to the Law Society, and failed to provide factual and honest answers to the Law Society during its investigation, contrary to Law Society Rules 3-51(1), 3-52, 3-59, 3-60, 3-61, 3-63(1), 3-63(2), and 3-68, then in force (now Law Society Rules 3-58(1), 3-60, 3-67, 3-68, 3-69, 3-72(1) and 3-72(2)) and rule 2.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer acknowledged that they acted inappropriately and has closed the immigration portion of their practice. The lawyer has hired a bookkeeper and an accountant to help maintain proper accounting records. The lawyer did not intend to mislead the Law Society and will take greater care and time to answer honestly and accurately in all future dealings with the Law Society. (CR 2022-02)

Misleading / Dishonesty / Falsifying documents/ Negligence

While prosecuting a tax evasion matter, a lawyer failed to exercise reasonable care and perform all legal services to the standard of a competent prosecutor, including failing to disclose notes and witness statements for five witnesses to the defence, contrary to one or more of Chapter 1, rule 1(2); Chapter 3, rule 1; and, Chapter 8, rule 18 of the *Professional Conduct Handbook*, then in force (now rule 2.1-1(b) of the *Code of Professional Conduct for British Columbia*). The information was ultimately provided and could have been used in the course of the trial to contradict the evidence of witnesses had it been necessary. The lawyer apologized and realized the mistake in failing to provide the statements and information in a timely way. (CR 2022-03)

Client ID and verification

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

A lawyer failed to obtain and verify client identification for the transfer of money through their trust account on two separate occasions as required under Law Society Rules 3-102 and 3-104. In the first instance involving an estate, the lawyer deposited two client cheques into the trust account for the estate administrator client, and then paid \$82,249.03 from the account. In the second instance involving a real estate purchase where the lawyer's client lived in Kelowna, the lawyer deposited the purchase funds into the trust account. Both clients were former clients of the practice the lawyer had taken over and, consequently, the lawyer did not take steps to identify or verify their identities. The lawyer has new office procedures and processes for client identification and verification. (CR 2022-04)

A compliance audit revealed that a lawyer acted for clients who lived outside of Canada in a financial transaction matter, without verifying the client's identities as required by Law Society Rule 3-104(5). The lawyer obtained copies of the client's driver's license, passport and corporate documents but failed to retain an agent to verify the client's identity because the lawyer was comfortable with the client who was well known through his dealings in the community. The lawyer has thoroughly educated himself and others at his firm and created checklists to assist in these matters. (CR 2022-06)

Another lawyer failed to follow the client identification rules with respect to a corporate client in regard to paying settlement proceeds through his trust account, contrary to Law Society Rules 3-100, 3-102 and 3-103. The lawyer had been approached by a client to assist a relative in collecting a commission that was owed to a corporation owned by the relative.

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The lawyer requested that the funds be paid directly to the corporation. Counsel for the debtor declined, insisting that the funds be processed through the lawyer's trust account with undertakings. The lawyer agreed and processed the settlement funds without having the required client identification. The error was identified during a Law Society compliance audit. The lawyer advised that this was an unusual case in which their usual processes had been accidentally missed. The lawyer has put new policies in place and instructed staff about the importance of strict compliance with the client identification rules. (CR 2022-07)

A compliance audit revealed that a lawyer failed to verify the identity of his corporate client, who was located outside of Canada, in a non-face-to-face private lending transaction, contrary to Law Society Rules 3-100(1)(a) and (d)(i), 3-103, and 3-104(5). The lawyer was retained by a corporate client to assist with a private lending transaction and instructions were provided by a lawyer from Hong Kong. Most critically, the lawyer did not have an agent verify the identity of the individual located outside Canada, contrary to Rule 3-104. The lawyer has taken steps to prevent a reoccurrence including broadening the client information fields in the intake process to include a form to address client identification and verification issues. (CR 2022-08)

In two separate instances a lawyer failed to comply with the client identification and verification rules contrary to Law Society Rules 3-104(5) and (6). Both matters involved persons residing in the United States who retained the lawyer to deal with real estate matters. In the first matter, the lawyer assisted with the purchase of a property and the incorporation of a holding company. The client met with the lawyer by telephone numerous times but did not meet in person. An agent identification and verification agreement was prepared but was not delivered at the time of the sale. In the second matter, the client had been a client of the lawyer's for many years and they had met in person numerous times. The lawyer assisted the client to sell four separate properties. The lawyer was unable to locate a copy of the client's identification from a previous file. For one of the four real estate transactions, the lawyer did prepare the required agreement and have a notary public in Arizona act as agent to verify the identification of the client. However, the agent did not properly attest on each copy of the identification, and the attestation was not provided directly to the lawyer, but rather was given to the client who then delivered the attestation to the lawyer. In response to being informed of the failure to comply with the Rules, the lawyer held an office meeting to review the firm's policies and procedures with respect to client identification and verification and has better procedures in place. (CR 2022-09)

A compliance audit revealed that a lawyer failed to comply with the client identification and verification rules in acting for two different clients on the same non-face-to-face real estate transaction, contrary to Law Society Rules 3-104 (2) and (5). The lawyer failed to verify the buyer's identification and instead relied on copies of the buyers' identification provided by the realtor.

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The sellers provided copies of identification notarized by a Polish notary but the lawyer did not communicate with the notary or have a written agency agreement in place as required by Law Society Rule 3-104(5). After the compliance audit, the lawyer met with his staff to discuss procedures and to ensure that all files follow the client identification rules. (CR 2022-10)

Client ID and verification / Mishandling trust funds

A compliance audit revealed that a lawyer acted for a client in a family law matter involving a financial transaction, without verifying their client's identity as required by Law Society Rule 3-102. The lawyer received a trust cheque as settlement of the client's claim, deducted legal fees and paid the remainder of the funds to the client. The lawyer believed the client's matter was exempt from the client identification and verification rules because the settlement cheque had been provided to him by another lawyer. Rule 3-101(b)(ii) exempts a lawyer from having to verify the identity of opposing counsel when receiving settlement funds. This exemption, however, did not exempt the lawyer from identifying the client prior to paying funds to the client.

Additionally, the lawyer delayed handling trust funds on 22 client matters by failing to issue bills, withdraw fees from trust, and pay out trust funds belonging to the clients when the files concluded, contrary to Law Society Rule 3-58.1(2) and rules 3.2-1 and 3.5-6 of the *Code of Professional Conduct for British Columbia*. Although the lawyer was aware of the amounts held in trust for clients, they acknowledged that their billing practices were not organized and has now taken steps to bill regularly. (CR 2022-11)

Misuse of trust account / CIV / Improper Billing / Supervision of Articled Student

A lawyer used their trust account for a transaction where legal services were not provided; failed to properly verify the identity of the client in a non-face-to-face transaction; failed to directly supervise an articling student; and billed for non-taxable disbursements when no disbursements had been incurred, contrary to Law Society Rules 3-58.1, 3-102(1), 3-104(1), 3-105(1) of the Rules and rule 6.1-1 and 6.2-2 of the Code of Professional Conduct for British Columbia. The lawyer assisted a paralegal in Ontario, with the purchase of a used vehicle in BC. The lawyer considered the purchase of a vehicle in the circumstances of this case, where there was an out-of-province purchaser in a private sale purchase requiring specific due diligence, was a legal transaction and consequently the use of the trust account to hold the purchase price pending confirmation of the sale was appropriate. Although the lawyer was responsible for this transaction, he was out of town at the time the sale of the vehicle completed and delegated the matter to his articled student under the supervision of his associate.

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The articled student sent a statement to the client that included the phrase, “[The lawyer's office name] has not provided legal advice with respect to this transaction ...”.

The lawyer acknowledged that his fee statement included legal fees of \$318.60 as well as an additional \$300 charge (which funds were given to the unpaid articling student for their efforts). The lawyer stated that it was the bookkeeper who entered the words “Legal Fees” on the statement sent to the vehicle purchaser, and was unaware of that prior to discovery in the compliance audit. The lawyer committed to taking more care in the future in reviewing fee statements and ensuring that they accurately describe any fees and disbursements. Further, the lawyer acknowledged that it that it did not occur to him to ask for the client's identification, as he was dealing with a law firm in Ontario and had received identification from the client for use in the purchase of the car.

The conduct review subcommittee encouraged the lawyer to create checklists for future files relating to client identification and carefully consider whether legal services are being provided in any manner where funds will be deposited to trust, carefully review and consider entries to his trust account and to have clarity in the use of the term “legal fees”. (CR 2022-12)

Pre-signed trust cheques

A compliance audit revealed that a lawyer left pre-signed trust cheques with their brother (who is not a lawyer) for use in case of an emergency when the lawyer was away from the office, contrary to rules 3.5-2 and 6.1-3(n) of the *Code of Professional Conduct for British Columbia*. The lawyer is a sole practitioner and would arrange for another lawyer to oversee the practice when the lawyer expected to be away; however, the lawyer would not provide the caretaking lawyer with access to the trust accounts. The lawyer acknowledged their obligation to safeguard client property and understood that pre-signing trust cheques increased the risk of loss of client funds. The lawyer no longer pre-signs trust cheques. Instead, the lawyer intends to leave unsigned cheques with their brother, and authorize another lawyer to sign cheques in the lawyer’s absence, if necessary. (CR 2022-13)

Breach of Undertaking

A lawyer breached an undertaking in connection with a loan transaction, contrary to rule 7.2-11 of the Code of Professional Conduct for British Columbia. The lawyer received trust funds under a covering letter which they did not fully review. The lawyer paid out the trust funds to the client without fulfilling the undertaking set out in the covering letter. The lawyer explained that undertakings with respect to the trust funds had not been discussed and the lawyer was not expecting to be placed under them. Sometime later, the lender’s lawyer’s office followed-up for confirmation that the payment that was the subject of the undertaking had been made.

The lawyer acknowledged that reading the entire correspondence and understanding the undertaking was her responsibility. On all files, the lawyer now has a discussion with the other lawyer by email to confirm whether there will be undertakings placed. Prior to sending out funds to a client from a lender's counsel, the lawyer now re-reads the covering letter. (CR 2022-14)

Facilitating the Unauthorized Practice of Law

A lawyer facilitated the unauthorized practice of law by a former lawyer, contrary to Law Society Rules 2-14(1) and (2) and rules 6.1-4, 7.6-1 and commentary [1] of the *Code of Professional Conduct for British Columbia*. After the former lawyer had been disbarred by the Law Society, the lawyer purchased their law practice and the former lawyer continued to work at the law firm. The lawyer believed that the former lawyer had taken sufficient steps to indicate that they were working as a paralegal rather than as a lawyer. The lawyer gave the former lawyer access to the office and client files, and allowed them to have personal contact with former clients while working on their files. The lawyer's conduct was inappropriate because it allowed the public, and the firm's clients in particular, to believe that the former lawyer continued to practice. This also failed to provide the clients with the protection of lawyer-client privilege, a duty of confidentiality, a regulated standard of care, and protect them from wrongdoing by the former lawyer as he was no longer regulated by the Law Society. The lawyer admitted that they did not appropriately turn their mind to the definition of the "practice of law" and whether the former lawyer's conduct fell under unauthorized practice. The lawyer admitted that they failed to critically assess the context of working with the former lawyer and how that relationship would appear to the clients. The lawyer reverted to their old practice and firm name to prevent client confusion, changed the practice's physical location, reduced the number of client files, and secured all files and online server against the former lawyer's access. A conduct review subcommittee referred the lawyer to the Practice Standards Committee to receive guidance in how to avoid or prevent future ethical breaches of the Law Society Rules and *BC Code*. (CR 2022-15)

Electronic filing requirements

A compliance audit revealed that a lawyer disclosed their Juricert password to their assistant (who was his wife) and permitted the assistant to affix the lawyer's digital signature on documents electronically filed in the Land Title Office, contrary to the Juricert Agreement and the Land Title Act, Law Society Rule 3-96.1 and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*.

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The lawyer had no recollection of reading the Juricert Contract or reviewing the obligations under the Rules and the BC Code and that since receiving the Juricert password in 2004 they allowed their assistant to affix the electronic signature to Land Title documents. The lawyer obtained a new Juricert certificate with a password that only the lawyer knows. The lawyer was also recommended to set aside time to regularly read the Law Society web page and discipline decisions and *Bencher's Bulletins*. (CR 2022-16)

Compliance audits and practice reviews resulted in several other similar conduct reviews

- During an audit, the lawyer advised the auditor that two legal assistants knew the lawyer's Juricert password as they were delegated to register all land title documents (including Property Transfer Tax returns where the funds were paid out of their trust account). The lawyer was of the mistaken belief that the Juricert needed to be affixed at the same time as the document was filed. The lawyer sincerely regretted the violation of the Rules and fully understood the seriousness of the situation. The lawyer has obtained a new Juricert password. (CR 2022-17)
- Another lawyer who was elderly, had never learned how to type. On the few occasions the lawyer dealt with a real estate matter, they would stand behind their assistant while the Juricert password was typed and their signature affixed. The lawyer was not aware that they were in contravention of rule 6.1-5 of the *BC Code* and once becoming aware, obtained a new password, and learned how to input it themselves. (CR 2022-18)
- During an audit, it was revealed that the lawyer has disclosed their Juricert password to the legal assistant and permitted the assistant to affix the digital signature to documents electronically filed with the LTO, including Property Transfer Tax returns where funds were paid out of their trust account. In December 2018, the lawyer's assistant read a *Benchers Bulletin* that referred to other lawyers who had been sharing their Juricert passwords, and the Law Society had noted that this procedure was not correct. When the assistant brought this to the lawyer's attention, the lawyer changed the Juricert password and has not disclosed it to anyone else. The lawyer has agreed to be more diligent in carefully reviewing the *Benchers' Bulletins* and other Law Society publications in the future. (CR 2022-19)
- During a practice review, it was revealed that the lawyer had disclosed their Juricert password to the law firm's paralegal and that the paralegal had been using it since the lawyer had first obtained the Juricert certificate, including on Property Transfer Tax returns where the funds were paid out of their trust account.

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- The lawyer advised that they had not educated themselves on the practice requirements for electronic filing and admitted that it never occurred to them check the Rules and legislation pertaining to Juricert certificates. The lawyer obtained a new Juricert certificate and keeps it on a USB key in their office. (CR 2022-20)

Fee agreement

A lawyer charged a personal injury client an hourly fee in addition to the maximum allowable contingency fee, contrary to Law Society Rule 8-2(1). The lawyer explained that missed appointments and communication problems with the client created an unprecedented amount of inefficiency. The lawyer returned the funds for the additional bill to the client. The lawyer admitted that they did not give the issue of charging for missed and late meetings enough consideration before issuing an account for improper charges. The lawyer stated if dealing with unusual or novel situations in the future, they would seek advice from a practice advisor and Benchers. (CR 2022-21)

Misleading / dishonesty / falsifying documents

In the course of completing the Professional Legal Training Course (“PLTC”) a lawyer received assistance from another lawyer with a writing assessment and made representations to the Law Society, which they knew or ought to have known were untrue, contrary to one or both of the PLTC Integrity Policy and rules 2.1-5(f) and 2.2-1 of the *Code of Professional Conduct for British Columbia*. The lawyer self-reported their conduct to the Law Society, admitting that they had another lawyer review their third attempt of the PLTC writing assessment before submitting it to PLTC. The lawyer had signed a declaration three times that they did not receive any assistance on the writing assessment. The lawyer took full responsibility for his misconduct and was considered to have learned significantly from this experience. (CR 2022-22)