

Conduct Reviews – 2022-02 (July to December)

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.

Misuse of trust account / Unreported income to CRA

While acting as executor on an estate matter, a lawyer improperly used their trust account in the absence of legal services and failed to meet their financial obligations, including: holding their executor's remuneration of \$86,561.78 in their pooled trust, contrary to Law Society Rule 3-60(4); maintaining more than \$300 of their own funds in their pooled trust account, contrary to Law Society Rule 3-60(5); processing transactions through their trust account for a renovation to their family home without providing substantial, related legal services; and failing to report their executor's remuneration as income on their income tax return filed with the Canada Revenue Agency ("CRA"). The lawyer advised that it was the first time they had acted as executor and trustee for a client. The lawyer acknowledged their mistakes and corrected the tax filings and paid all outstanding taxes and interest to CRA. (CR 2022-23)

Misuse of trust account

A lawyer improperly permitted their firm's trust account to be used to receive and disburse funds totaling \$63,524.35 in circumstances where the firm did not provide substantive legal services directly related to those funds, contrary to a lawyer's duty to make inquiries and a lawyer's obligation to use a trust account only for receipt and disbursement of funds directly related to the legal services being provided. The lawyer deposited a payment of \$63,524.35, which had been made directly to a client in the course of estate litigation, into the firm's trust account as a retainer for anticipated legal services with regard to the estate litigation. Ultimately, the client required the funds for other purposes. Rather than returning the funds directly to the client, the lawyer authorized a number of third-party payments to be disbursed from trust on behalf of the client, none of which related directly to any legal services provided. A conduct review subcommittee acknowledged that the lawyer's conduct was not deliberate and the actual risks of the transactions being used for improper purposes was low. Nevertheless, it is the lawyer's duty to ensure trust accounts are used only for legitimate commercial purposes, which requires strict compliance with the obligation to use a trust account only for receipt and disbursement of funds directly related to the legal services being provided. The lawyer understood and agreed with the need for compliance. The subcommittee referred the lawyer to the resources available to assist the profession in understanding the gatekeeper function in respect of trust accounts, including the "Anti-

Money Laundering” Guidance for the Profession posted to the Law Society’s website. (CR 2022-24)

No cash rule

A lawyer allowed their staff to accept an aggregate total of \$9,803.80 cash from a client in a civil litigation matter, contrary to Law Society Rule 3-59(3), and subsequently issued and signed a trust cheque forwarding the \$9,803.80 to another law firm as settlement funds, contrary to Law Society Rule 3-59(6). The lawyer’s staff had received an initial \$6,000 in cash followed by additional cash deposits of \$2,500 and \$1,303.80. The lawyer was unaware that their staff had accepted cash in those circumstances, and was unaware of the specific requirements of Rule 3-59. A conduct review subcommittee advised the lawyer that Rule 3-59 is designed to prevent money laundering. The lawyer accepted responsibility for their firm accepting cash and no longer accepts cash for any matters as a result of this Rule breach. (CR 2022-25)

A lawyer accepted an aggregate total of at least \$12,000 in cash from their client as a retainer on a criminal law matter, and refunded \$5,682.69 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). The lawyer was aware of Rule 3-59 and stated that the breach arose because of a breakdown in office systems. A conduct review subcommittee advised the lawyer that Rule 3-59 is a key part of the Law Society’s ability to mitigate against the risk of lawyer involvement in money laundering. The lawyer took responsibility for the breach and has improved the training provided to their staff and the accounting documentation on client files. The lawyer no longer accepts cash retainers from clients on new matters. (CR 2022-26)

Electronic filing requirements

A compliance audit revealed that a lawyer disclosed their Juricert password to their assistant and permitted the assistant to affix the lawyer’s digital signature on documents electronically filed in the Land Title Office (including a Property Transfer Tax return, which triggered a withdrawal of trust funds), contrary to their Juricert Agreement, the *Land Title Act*, Law Society Rules 3-96.1, 3-64.1(6) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. When the conduct occurred, the lawyer and their assistant were concerned about COVID-19 transmission and the public health mandates for social distancing. Instead of entering the assistant’s work area to enter their Juricert password, the lawyer disclosed their Juricert password to their assistant, who then entered it and inserted the lawyer’s electronic signature. The lawyer has acknowledged the conduct was inappropriate, and the significant potential risk to the public when Juricert passwords are not kept strictly confidential. Following the audit, the lawyer obtained a new Juricert certificate with a new password and confirmed they are the only person who knows the current

password. The lawyer will ensure any future conveyancing files are completed in compliance with the Law Society Rules and other requirements. (CR 2022-27)

Client ID and verification / Electronic filing requirements

A compliance audit revealed that a lawyer failed to comply with their client identification and verification (“CIV”) obligations in relation to three non-face-to-face real estate transactions, as required under Law Society Rules 3-102 and 3-104. The lawyer was not aware of the CIV Rules, including the requirement to retain an agent to verify the client’s identity in non-face-to-face transactions. The lawyer acknowledged that many of the Law Society’s *Benchers’ Bulletins* discussed the CIV Rules, and that they had been inattentive to the information provided. Since the audit, the lawyer has established a new client intake procedure to ensure compliance.

In addition to the CIV breaches, the lawyer had disclosed their Juricert password to two members of their support staff, and permitted their staff to affix their digital signature on documents electronically filed in the Land Title Office, contrary to their Juricert Agreement, the *Land Title Act*, Law Society Rule 3-96.1, and rule 6.1-5 of the *Code of Professional Conduct for British Columbia*. The lawyer advised that, at the time of the audit, three office computers had their Juricert password on them. When a document needed to be signed, they would sometimes go over to those computers and enter their Juricert password. They had mistakenly believed that it was sufficient to enter their Juricert password themselves from their staff’s computer. At other times, the lawyer would ask their assistant to enter their password on their behalf, and stand behind their assistant while their Juricert password was entered. The lawyer now has a new Juricert password and applies the password and signature from their own computer only. (CR 2022-28)

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 compliance audit revealed that a lawyer failed to comply with their client identification and verification (“CIV”) obligations in relation to a non-face-to-face real estate transaction by failing to verify the identity of their client, who was located outside of Canada, contrary to Law Society Rule 3-104. The lawyer engaged a notary outside of Canada to assist with the identification and verification of the client and to obtain original signatures on conveyancing documents. The notary completed the form provided; however, the lawyer failed to ensure the procedure and agency agreement complied with Rule 3-104. Although the lawyer obtained a copy of their client's identification document and sought the

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assistance of an agent, it was not properly attested and they did not enter into a proper agreement with an agent, in the form required, for the purposes of verification. The lawyer has since created an intake form for mandatory use by their staff, regularly obtains two pieces of identification from clients, and has automated the process to generate a conforming agency agreement. (CR 2022-29)

A compliance audit revealed that a lawyer failed to comply with their CIV obligations in relation to a non-face-to-face transaction while acting for a corporate client. The lawyer was retained by a corporate entity to act in regard to a subscription agreement. The lawyer failed to verify the identity of the instructing individual prior to proceeding with the transactions and failed to retain the documentation used to verify the identity of the corporate client, contrary to one or more of the CIV rules set out in Part 3, Division 11 of the Law Society Rules. The lawyer was apologetic and acknowledged their conduct, and now uses the Law Society Checklist for all file opening procedures and closely reads all *Benchers' Bulletins*. (CR 2022-30)

A compliance audit revealed that a lawyer failed to comply with CIV rules in a non-face-to-face transaction for a corporate client, having regard to the lawyer's obligations under Rules 3-102, 3-104(1) and (5), 3-106 and 3-107 of the Law Society Rules. The lawyer was retained to assist with a lending transaction on behalf of a client's company which was located outside of Canada. The lawyer asked an associate to open a new file and to take the necessary steps to obtain the CIV documents; however, the lawyer did not follow up with the associate to ensure that the CIV was completed. The lawyer admitted that the Rules requiring attestations for clients not in Canada, retention of CIV records and documents, and obtaining full CIV compliance within 60 days of any financial compliance, were not followed. The lawyer's failure to complete the CIV requirements was due to inadvertence and was not wilful conduct. The lawyer acknowledged that the CIV rules are an important part of the Law Society's anti-money laundering measures. The lawyer's firm reviewed their existing file opening process and now has an automated system where a file cannot be opened without CIV being completed. The lawyer has provided training on the rules and CIV generally to the lawyer's practice group and the law firm appointed a partner to re-educate the firm on the CIV rules. The lawyer advised that students and new associates are required to do the online training that the Law Society provides as well as in-house training. (CR 2023-31)

A compliance audit revealed that a lawyer failed to comply with Law Society Rules 3-102 and 3-104 of the CIV rules in a non-face-to-face real estate transaction involving a client who was the donor of a Power of Attorney. The lawyer believed that the previous lawyer who had prepared the Power of Attorney for the client had confirmed their identity at that time and therefore the lawyer did not need to do so. The lawyer acknowledged that they could not rely exclusively on the previous lawyer's identification of their client. The lawyer

reviewed the CIV rules and put new procedures in place, including retaining an agent when acting for a donor using a Power of Attorney. The lawyer's firm also held a meeting to address the revised policies and procedures and documents were circulated to all lawyers and staff, including the Law Society's identification and verification checklists. (CR 2022-32)

Quality of service

While acting for a vendor in a conveyancing matter, a lawyer failed to adequately assist their client, who was not a resident of Canada, to establish their residency status; failed to provide advice to their client to address the residency status issue in a timely manner; and engaged in negotiations regarding a holdback which did not meet the requirements of the *Income Tax Act*, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*. At all times the lawyer believed their client was a resident of Canada. However, the purchaser's counsel was not completely convinced the client was a resident, due to a holdback that had been negotiated by the realtors. The lawyer did not assist their client or provide advice to address the residency issue. The lawyer's conveyancer referred the client to an accountant for assistance in applying for a certificate of compliance. Knowing an accountant was involved, the lawyer thought that the residency issue would be dealt with. However, the matter remained unresolved and the funds of approximately \$30,000 remained in trust at the time of the Conduct Review. When asked why six years had gone by without a resolution, the lawyer explained that they provided the Notices of Assessment and thought that would be enough to satisfy the buyer's counsel. The lawyer had no further explanation. With respect to non-resident sellers, the lawyer stated that they were taking more proactive steps at the outset of files, but did not specify what these were. The lawyer decided to no longer accept conveyancing files where a holdback has been negotiated. (CR 2022-33)

Engaging in unlawful conduct

While employed as in-house counsel, a lawyer obtained confidential, material, and non-public information concerning a transaction, and subsequently purchased shares before the information was public, contrary to rule 2.2-1 and 3.3-2 of the *Code of Professional Conduct for British Columbia* (the "Code"). The lawyer was responsible for corporate matters for the client and purchased approximately \$95,000 in shares from the client's parent company. The lawyer later sold the shares and self-reported to their superiors at work immediately afterwards, ultimately resigning. The lawyer took responsibility for their actions and acknowledged that they should have avoided purchasing the shares and should have inquired of general counsel whether open market purchases were permitted at the time. The lawyer provided medical evidence that indicated they were under stress while working as in-house counsel. The lawyer now has a small practice and has reduced their workload. (CR 2022-34)

Law Society requirement

A compliance audit revealed that a lawyer failed to remit GST on time contrary to a lawyer's duty to promptly meet financial obligations under rule 7.1-2 of the *Code of Professional Conduct for British Columbia*. To collect the GST arrears the Canada Revenue Agency issued a legal demand against the lawyer's general account – Such a demand amounts to a monetary judgement, which must be reported to the Law Society under Law Society Rule 3-50, which the lawyer failed to do. The audit also identified arrears for the lawyer's payroll remittances from payroll source deductions. The lawyer reported that they had paid their GST and payroll remittances in full and on time on the trust reports for those years, which was not accurate. The lawyer's misconduct occurred during an extremely stressful personal situation that had since been resolved. By the time of the conduct review, the lawyer had met their financial obligations by bringing their firm into compliance with all GST and payroll remittances. The lawyer had also made changes to their practice including using a payroll service and hired a bookkeeper. (CR 2022-35)

Breach of undertaking

While acting for the purchaser in a real estate conveyance of a strata property, a lawyer failed to fulfill an undertaking relating to strata maintenance fees, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer accepted an undertaking to obtain confirmation that strata maintenance fees had cleared, and release the holdback to the vendor's lawyer as set out in the Statement of Adjustments. If the lawyer did not receive confirmation that the strata fees had cleared within a week of the conveyance closing, the lawyer undertook to remit the holdback to the strata management company and provide confirmation to the vendor's lawyer. However, the lawyer did not advise that the holdback could be released until they were reminded by the vendor's lawyer two months later. The lawyer advised that the firm's usual systems had broken down during the beginning of the COVID-19 pandemic. The lawyer believes their staff and the existing systems including the bring-forward process at their firm are very good and the unusual circumstances that occurred during that time have been resolved. (CR 2022-36)

Another lawyer breached an undertaking while acting for the vendors in a real estate transaction and failed to respond to correspondence from the purchaser's notary regarding the undertaking, contrary to rules 7.2-5 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer undertook to obtain a metered utility reading as at the adjustment date and provide the notary's office with proof of payment within a reasonable period of time. After several reminders from the notary, the lawyer sent a copy of the metered utility bill issued four months after the conveyance completed. The notary's client was owed money for the utility bill. The lawyer said they would enquire with their clients about payment and then subsequently failed to respond to four requests for updates from the notary over a three-month period. The lawyer was remorseful for the breach of undertaking

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and advised that at the time the conveyance took place it was a difficult and challenging period in their life. The lawyer sought assistance for their personal challenges and engaged in further education through Continuing Legal Education and other assistance available to them from the Law Society. The subcommittee reminded the lawyer that undertakings require strict compliance and are a solemn promise of performance. (CR 2022-37)

While acting for borrowers in a mortgage discharge transaction, a lawyer breached three undertakings to opposing counsel including failing to pay the payout amount on or before the deadline imposed in the undertaking, failing to pay out and deliver the payout amount prior to filing the discharge document in the Land Title Office and failing to send confirmation of filing of the discharge with its registration particulars to opposing counsel contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer had registered the discharge and sent funds to the other counsel in what they believed was the usual and more appropriate way, even though it was not in compliance with their undertakings. The lawyer admitted that they should have contacted the other lawyer to seek a modification of the undertakings if they did not agree with them, but could not explain why they did not do so. The subcommittee advised the lawyer that they must never ignore an undertaking again, to which the lawyer said they understood and agreed. (CR 2022-38)

A lawyer breached a trust condition by releasing settlement funds to their client without having first delivered to opposing counsel an endorsed copy of an acknowledgement of receipt of settlement amount, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. When opposing counsel found out that the funds had been released before their receipt of the acknowledgment, opposing counsel contacted the lawyer three times seeking a status update. The lawyer failed to respond to the communications from opposing counsel, contrary to rule 7.2-5 of the *BC Code*, until after opposing counsel complained of the breach to the Law Society. The lawyer then advised the Law Society that the originally signed acknowledgment had been lost and the lawyer had their client sign a new acknowledgment, which was provided to opposing counsel. The lawyer independently elected to take the Law Society on-line Communications Toolkit course. The conduct review subcommittee provided several recommendations to the lawyer including reviewing and updating processes for recording undertakings and trust conditions as well as determining tasks appropriate for delegation to staff, and periodically reviewing the practice management tools available on the Law Society website. (CR 2022-39)

While representing their client with respect to the sale of two strata lots, a lawyer breached their undertaking to the buyer's lawyer to pay out and discharge the mortgage and assignment of rents that was registered against the two strata lots, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. This was the lawyer's first commercial transaction of this nature and they realized that the undertaking that they gave

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was problematic in that it was poorly worded and was not within their control. Specifically, the lawyer would not have enough funds from the sale of the two strata units to pay to the bank in full, as full payment was required before the bank would provide registerable discharges of the mortgages. The lawyer admitted that they should not have provided the buyer's lawyer with the undertaking without first obtaining the bank's commitment that they would provide partial discharges as each sale completed.

The lawyer no longer practices in the area of commercial real estate and, at the time of the conduct review, was attending the Junior Lawyers Risk Management Conference. The lawyer had also been referred to the Practice Standards Committee and the conduct review subcommittee encouraged the lawyer to take full advantage of the advice provided by Practice Standards. (CR 2022-40)

No cash rule

A compliance audit revealed that a lawyer accepted an aggregate total of \$12,500 in cash from a client on a civil litigation matter for fees and disbursements, and refunded \$2,551.49 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). The lawyer had received more than \$7,000 in cash from the client over the course of a few years, and had billed almost everything. The client then paid a further \$5,000 cash retainer. When the matter concluded, the lawyer instructed their paralegal to return the remaining trust funds to the client via trust cheque. The lawyer acknowledged their mistake, and understood that Rule 3-59 exists to prevent money laundering. The lawyer took steps to ensure the breach would not reoccur, including hiring an experienced bookkeeper. A conduct review subcommittee suggested that the lawyer use an electronic backup system, in addition to their paper filing system. (CR 2022-41)

A compliance audit revealed that a lawyer accepted an aggregate total of \$10,500 in cash from their client as a retainer on a criminal law matter, and refunded \$4,000 to the client by way of trust cheque instead of cash, contrary to Law Society Rule 3-59(5). Two retainer deposits, in the amounts of \$2,500 and \$4,000, were properly recorded by the lawyer's staff as cash in the client ledger. However, a \$4,000 deposit was incorrectly recorded as an electronic funds transfer. Therefore, the ledger indicated that only \$6,500 was received in cash, not the full \$10,500. As a result of the administrative error and the failure to have a system in place to catch such errors, the lawyer inadvertently returned \$4,000 to the client by way of trust cheque. The lawyer acknowledged the misconduct and took steps to ensure the breach would not reoccur, including implementation of a new law office accounting program, retention of an accountant and an in-house bookkeeper, and a mechanism for cross-checking how funds are received and paid. (CR 2022-42)

Integrity / Sexual harassment

A lawyer attempted to pursue a romantic relationship with a family law client and crossed professional boundaries, contrary to rules 2.2-1, 3.4-1 and 6.3 of the *Code of Professional Conduct for British Columbia*. The lawyer shared the intimate details of their own family law difficulties and depression with the client while sharing dinner and alcohol in a park, and then while consuming marijuana with the client at the client's home. The lawyer told the client of their romantic feelings and, when the client had difficulty finding housing, suggested that they buy a duplex together. The client attended the conduct review and explained their particularly vulnerable state at the time of the lawyer's misconduct, which made it difficult to respond to the lawyer's verbal advances. The client stated that the experience had been emotionally difficult and painful for them. A conduct review subcommittee noted that family law clients can be a vulnerable set of clients and as such the lawyer owed a duty to the client to maintain the strictest of professional boundaries at all times. It was not up to the client to reject the lawyer's advances, as they should have never occurred. The lawyer acknowledged their conduct was highly inappropriate, expressed deep remorse, and understood their failure to separate themselves and their own personal situation from their client. The lawyer acknowledged the power imbalance in the relationship and understood that their depression and personal difficulties were not an excuse for the misconduct. The lawyer took steps to address their mental health, including counselling and CLE courses, and now practises only in family law with a limited number of files. The subcommittee recommended the lawyer continue taking CLE courses, particularly in the area of mental health and wellness, and utilize the assistance of other lawyers in order to build a support network. The subcommittee also recommended that the lawyer resume counselling if their mental health issues returned, and noted the assistance available through the Lawyers Assistance Program. (CR 2022-43)

Improper trust withdrawal / Breach of undertaking

A compliance audit revealed that a lawyer withdrew ICBC settlement funds held in trust to pay their fees and disbursements, in relation to two separate personal injury matters. In each case, the lawyer had received ICBC settlement funds on their undertaking not to disburse the funds until an executed release had been properly signed, witnessed and returned to ICBC. The lawyer signed a trust cheque for their fees and disbursements, and the client did not attend their scheduled appointment to execute the release. Through inadvertence, the signed trust cheques for both matters were placed in the general account deposit book and taken to the bank and deposited. The lawyer withdrew the trust funds without first obtaining executed releases from the clients and forwarding same to ICBC, in breach of their undertakings to ICBC and contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*, and without first delivering bills to the clients, contrary to Law Society Rule 3-65(2). The lawyer acknowledged their mistake, and had already made changes in practice to prevent recurrence by the time of the conduct review. The lawyer's new practice

is not to sign trust cheques for their fees and disbursements, or trust cheques payable to clients, until the client has attended the office, approved the account and signed the release. (CR 2022-44)

Client ID and verification

A lawyer failed to comply with the client identification and verification rules in two client conveyance matters involving non face-to-face transactions. Specifically, the lawyer failed to have on file a written agreement with an agent verifying the identification of the client, contrary to Law Society Rules 3-104(5) and (7). The lawyer admitted that they failed to obtain an agent agreement on one conveyance, and may have obtained an agent agreement on the other matter but it was missing from their file. The lawyer acknowledged that it was their responsibility to ensure the agreement was in the file. The lawyer understood the reason behind Rule 3-104 was to ensure that individuals are properly identified with the prevention of money laundering in mind. The lawyer instituted a system at their firm to prevent this type of error from occurring, including that the lawyer personally completes the Law Society's Identification and Verification Checklist. The lawyer also takes steps to confirm the legitimacy of notaries, and if they are unable to do so, they will not proceed with the transaction and demand that their client seek another notary. The lawyer and their conveyancer have also completed CLE courses and trust accounting training. (CR 2022-45)

A lawyer failed to comply with the client identification and verification ("CIV") rules in two non-face-to-face real estate transactions, contrary to Law Society Rules 3-100, 3-102 and 3-104. The clients in both matters were not resident in British Columbia. In the first matter, the lawyer's receipt of a copy of their identification documents did not meet the requirements of Rule 3-102 nor did it comply with Covid guidance to the profession set out in the Law Society's March 17, 2020, Notice to the Profession. The lawyer failed to obtain and record employment details of these clients and in the second matter, failed to obtain and record the client's address and telephone number, contrary to Rule 3-100(1)(b)(iii). In respect of both matters, the lawyer failed to properly verify the clients' identities, including by not having an agreement or arrangement with an agent, contrary to Rules 3-102(1)(b) and 3-104(1) and also failed to obtain and record information about the source of the funds in both client matters, contrary to Rule 3-102(1)(a). The lawyer admitted that they were not sufficiently familiar with the CIV Rules and accepted full responsibility. The lawyer has now reviewed the relevant Rules and recent practice articles regarding proper CIV processes. The lawyer has revised their firm's CIV procedures, including circulating a detailed checklist which includes an agency agreement for non-face-to-face transactions and verifies all clients, including repeat clients. (CR 2022-48)

A lawyer failed to comply with the client identification and verification ("CIV") rules in a non-face-to-face real estate transaction involving their clients, a parent and their adult son,

contrary to Law Society Rules 3-102 and 3-104. The lawyer did not take any steps to verify the parent's identity. Instead, they relied on a Power of Attorney ("POA") which had previously appointed the son as Attorney for the parent. The lawyer incorrectly believed they had fulfilled their duty by verifying the identity of the son as they believed the son was their only client on this file. The lawyer acknowledged that the parent was also their client and as such they were obligated to identify and verify the parent's identity as well. The lawyer also assumed that the parent's estate planning lawyer would have verified the parent's identity at the time of the execution of the POA. The lawyer is now clear about their professional responsibilities regarding CIV where a matter involves a POA, has instructed their staff to ensure that POA donor ID is checked, and has emphasized the importance of observing this requirement. (CR 2022-50)

Civil litigation

In acting for the defendant in a large civil fraud claim, a lawyer wrote to the plaintiff's counsel with a settlement proposal, which included a term that the plaintiff withdraw any complaint made to police or companies associated with the lawyer's client. This term was included without the consent of the Crown or other regulatory authority and without regard to the lawyer's obligations under rule 3.2-6 and its commentary, and the commentary to rule 5.1-2 of the *Code of Professional Conduct for British Columbia* (the "Code"). In response to the lawyer, plaintiff's counsel asked whether the consent of the Crown had been obtained as per rule 3.2-6 of the *Code*. The lawyer immediately determined that their client needed independent legal advice before any further instructions regarding settlement could occur. The client obtained independent legal advice and the lawyer was instructed to withdraw the settlement proposal. The lawyer acknowledged that they did not realize the implication of their settlement offer and admitted that they were not aware of rules 3.2-6 or 5.1-2 of the *Code* at the time. The lawyer is now fully aware of the rules. The lawyer self-reported the matter. The lawyer agreed with the conduct review subcommittee's suggestions to review the *Benchers' Bulletin*, and to provide mentorship to more junior litigators as a senior counsel. (CR 2022-46)

Misuse of trust account, AML, Client ID and verification

A lawyer permitted their firm's trust account to be used to receive and disburse funds totalling \$1,926,375.59 in circumstances where the firm was not providing substantive legal services directly related to those funds, contrary to a lawyer's obligation to only use a trust account for receipt and disbursement of funds directly related to legal services. In addition, the lawyer permitted a client company to use their firm's trust account for the purposes of purchasing a life insurance policy, where the firm was not providing substantive legal services directly related to those funds. The lawyer failed to make reasonable, or any, inquiries into the source of the funds and why they needed to be deposited into the firm's

trust account, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia*. The lawyer also failed to comply with client identification and verification rules, contrary to Law Society Rules 3-102, 3-103, 3-104, 3-106, 3-107, and 3-108 in respect of two clients. The lawyer acknowledged the misconduct and understood that failing to properly identify clients and allow inappropriate use of trust accounts puts lawyers at risk of being used by unscrupulous clients for the purposes of money laundering and other criminal activities. The lawyer now meets all new clients in person where possible for identification and verification. The lawyer also requests government issued ID and identifying information for each client, reviews existing client files to ensure that appropriate client identification information is on file and if it is not, obtains and records this information from the client. (CR 2022-47)

Misuse trust account / AML / Client ID and verification

A lawyer permitted their firm's trust account to be used by a client, a charitable organisation, to receive and disburse funds in circumstances where the firm was not providing substantive legal services directly related to those funds, contrary to a lawyer's obligation to only use a trust account for receipt and disbursement of funds directly related to the legal services being provided. The lawyer failed to make inquiries about the circumstances of the transactions, contrary to rule 3.2-7 of the Code of Professional Conduct for British Columbia. The lawyer also failed to comply with the client identification and verification ("CIV") rules in four client matters, contrary to Law Society Rules 3-102, 3-103, 3-104, 3-106, 3-107 and 3-108. The lawyer took over a law practice, had next to no client ID processes in place at the time and assumed that CIV had been done on these files by the previous lawyer. The lawyer admitted that naivety and lack of experience led them to breach the rules during the first 18 months of running the firm. The lawyer acknowledged their misconduct and that he failed to meet their CIV obligations. The lawyer has put in place CIV processes at their firm, meets regularly with other lawyers in the firm to ensure that identification is double checked, and whenever possible, does in-person CIV checks. (CR 2022-49)

Breach of undertaking

The lawyer acted for themselves and their spouse to transfer title of a recreational property from family members. Two of the family members were covenantors on a mortgage registered on title and the discharge of the mortgage was contemplated as part of the buyout of their interest in the property. The lawyer provided an undertaking to discharge the mortgage but, two years later, the discharge was still not complete, contrary to rule 7.2-11 of the *Code of Professional Conduct of British Columbia*. The family member's counsel followed-up with the lawyer multiple times requesting discharge of the mortgage. The lawyer explained that initially the bank had approved the removal of the family members

from the mortgage covenants, but then refused to do so and instead insisted on a new mortgage. A new mortgage was registered and the lawyer assumed the family members were no longer on the mortgage covenant and, when they received a letter from the bank two years later showing the family members on the mortgage, they retained counsel to handle the matter. The lawyer expressed regret to the subcommittee that they had failed to discharge the undertaking in a timely manner and should have pressured the bank for confirmation that the family members had been removed from the mortgage and that they should not have ignored requests of counsel for an update. The lawyer further acknowledged that, given the involvement of family in the transfer, they ought to have retained counsel rather than taking it on themselves. The lawyer has restricted their real estate practice and no longer handles real estate matters involving second tier financing or bank referrals. (CR 2022-51)

In acting for the buyer in the purchase of a property, the lawyer failed to fulfill their implied undertaking to pay out holdback funds, owing to the sellers, on a timeline stipulated in the sale contract, contrary to rules 7.2-11 and 7.2-13 of the Code of Professional Conduct of British Columbia. The holdback clause provided that the lawyer hold the holdback funds in trust for one year from the contract completion date and then release them to the seller. However, at the one year anniversary, the lawyer's client instructed the lawyer to request an extension from the seller to release the holdback funds later, due to unforeseen delays relating to the Covid-19 pandemic. When the sellers refused the extension, the lawyer paid out the holdback funds nearly one month late. The lawyer told the subcommittee he had not been aware that he had agreed to a deemed undertaking and thus was placed in a trustee position in regard to the holdback funds. He now understands that he was a trustee and his obligation to pay out the funds could not be altered by contrary instructions from his client. The lawyer expressed remorse for his actions, particularly after hearing the emotional and financial strain experienced by the sellers as a result of not having received the holdback funds on time. The lawyer has taken steps to ensure that he and his firm identify and fulfill all implied undertakings by ensuring undertakings are explicitly negotiated with counsel and all contractual conditions are diarized. (CR 2022-52)

Misuse of trust account

The lawyer permitted his firm's trust account to be used to receive and disburse funds totalling approximately \$63,000 in circumstances where the firm was not providing substantive legal services directly related to those funds, contrary to a lawyer's obligation to only use a trust account for receipt and disbursement of funds directly related to the legal services being provided. The client, who was well known to the lawyer and a second lawyer with the firm, received a bank issued cheque from his deceased mother's bank account related to the distribution of the mother's estate. The lawyer had previously refused to accept the estate funds from the client into trust, advising the client to open their own bank

account for the deposit, which was relatively difficult considering the client's unique immigration-related issues impacting their ability to obtain bank-accepted identification. However, when the lawyer was on vacation, the second lawyer at the firm allowed the funds to be deposited into trust. Although they did not personally approve the disbursements, the lawyer knew about the subsequent 59 separate trust disbursements of the funds to a variety of parties to satisfy the client's financial obligations.

The firm has since been able to assist the client in opening a bank account. The lawyer explained he had wanted to avoid the administrative burden of "acting as a bank" for the client but was confident there was absolutely no risk of money laundering as he had verified the funds from the initial deposit and each subsequent withdrawal was made to legitimate recipients. The subcommittee recognized the lawyer's limited options to assist the client, as once the funds were in trust, the lawyer was not able to contravene his client's express instructions or return the payment to the mother's estate, in violation of trust rules. (CR 2022-53)

Integrity / Court-related Conduct / Facilitating Breach of Court Order

In a complicated and high-conflict family law file, the lawyer 1) inserted details into court orders that were not ordered by the court, 2) filed an incorrect document with the court (holding the document out to be something it was not), 3) advised their client that they could share a report contrary to a court order, and 4) authored a potentially misleading letter that they gave to their client for the purpose of enabling their client to travel with their children instead of bringing a court application, contrary to rules 2.1-2, 2.2-1, and 3.1-2 of the Code of Professional Conduct of British Columbia. Aggravating factors included that the opposing party (the complainant) was at times self-represented, the complainant's highly personal, confidential and potentially prejudicial information, and that of their child, were exposed to other individuals, and the complainant reported significant physical and mental health concerns, mental health concerns relating to their child, and severe economic strain, all exacerbated by the litigation and the aggressive approach taken by the lawyer. The subcommittee noted that some aspects of the lawyer's behaviour did not appear to be in the best interests of the children and further escalated conflict in an already very high conflict matter.

The lawyer explained that they had no intention to mislead, the changes to the court orders were "obvious" details, they had made a mistake in filing the incorrect document, and they had forgotten the terms of the order prohibiting the sharing of the report. The subcommittee made numerous recommendations to the lawyer including participating fully in the remedial process offered by Practice Standards, specifics on preparing and arguing applications and appearing before the court, completing the Lawyers Assistance Program boundaries course,

practice-specific systems to put in place, and to seek regular mentorship from senior practitioners and colleagues as appropriate. (CR 2022-54)

Breach of undertaking / Failure to respond

The lawyer was the subject of two complaints related to breaches of undertakings in real estate conveyances, contrary to rule 7.2-11 of the Code of Professional Conduct of British Columbia. In the first, opposing counsel placed the lawyer on an undertaking to have discharges in-hand before closing – an undertaking that was different from the undertakings in the contract. The lawyer did not pay attention to the difference and agreed to the undertaking that they neither had the ability or the intention to complete. The lawyer informed the subcommittee they will ensure that undertakings are reviewed carefully and, if they vary from the “standard” undertakings, that they are capable of compliance, and, if not, that further correspondence with the counsel imposing the undertaking occurs.

In the second complaint, the lawyer provided an undertaking to pay outstanding maintenance fees on completion. The lawyer failed to provide the fees and did not respond to eight emails from the complainant over six months, contrary to rules 7.2-11 and 7.2-5 of the Code of Professional Conduct of British Columbia. Only after the Law Society became involved did the lawyer respond to the complainant and provide the fees. The lawyer admitted that they had not been sufficiently diligent in following up on communications and have since taken steps to ensure such communications do not fall through the cracks. Specifically, the lawyer has limited their areas of practice, restricted the number of real estate closings per month, instituted weekly reviews of conveyancing files, converted to an electronic tracking system, hired more staff to ensure adequate coverage, and performs daily review of emails to ensure nothing is missed. (CR 2022-55)

Breach of undertaking / Failing to deposit trust funds / Failure to report trust shortage

The lawyer breached an undertaking given to the seller when they filed transfer documents with the Land Title Office before they had sufficient funds in trust to complete the purchase (contrary to rules 2.1-4, 5.1-6, and 7.2-11 of the Code of Professional Conduct of British Columbia), failed to deposit trust funds into trust as soon as practicable (contrary to Law Society Rule 3-58(1)), and failed to report a trust shortage of almost \$30,000 in connection with the breach of undertaking (contrary to Law Society Rule 3-74(2)). The lawyer had missed depositing into trust the excess deposit after the realtor’s commission had been deducted and only discovered the error on the next month’s trust reconciliation. The failure to deposit the cheque and the trust shortage was unintentional and an inadvertent oversight entirely due to staff working remotely due to the Covid-19 pandemic. When the lawyer discovered the breach of undertaking, they contacted the seller’s lawyer, who agreed to waive the breach. The subcommittee reminded the lawyer that a trust shortage occurs when

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there are not enough funds in trust on the closing date to the credit of the client matter, even if there are sufficient funds in the pooled trust account, as those are being held for other clients. (CR 2022-56)