

Are you or any of your employees US citizens?

IF YOU OR any of your partners or employees are US citizens, and you or such partners or employees have a financial interest in or signature authority over trust accounts, you should be aware of the US government's Report of Foreign Bank and Financial Accounts (FBAR) requirements.

An FBAR must be filed by any US citizen or green card holder or other US resident ("US persons") with a financial interest in or signature authority over non-US financial accounts where the funds in the accounts together total USD\$10,000 or more. This includes a lawyer's trust account. BC lawyers who are US persons, or law firms whose signing authorities for trust accounts include US persons, should be aware of the requirements and ensure that any FBAR in respect of their trust account is filled out correctly. Most importantly, it is necessary to ensure that no confidential information about clients is disclosed. Generally, a lawyer must not disclose having been retained by a person about a particular matter and should therefore ensure such information is not included in an FBAR (BC Code s. 3.3).

1. US persons with a financial interest in the trust account

The FBAR regulations provide that the owner of record or holder of legal title of an account is deemed to have a financial interest in that account. As such, a BC lawyer who is a US person who holds legal title on a trust account is required to follow filing requirements for an individual with a financial interest. If the trust account is in the name of a partnership, a US person who is a partner has a financial interest in that account if he or she directly or indirectly controls either 50 per cent or more of the profits or 50 per cent or more of the capital in the partnership. If the trust account is in the name of a law corporation, a US person has a financial interest in that account if he or she owns 50 per cent or more of the total value of the shares or 50 per cent or more of the voting

power of all the shares in the corporation.

If an individual has a financial interest in 25 or more non-US accounts, he or she is required to fill out Part I of the FBAR form (Form 114), which relates to personal information, and should maintain records of the information normally included in Part II of Form 114, which relates to account information. If an individual has a financial interest in fewer than 25 non-US accounts, Part II should be completed. Note that "account information" does not include the names of beneficiaries to the trust, i.e. does not include a lawyer's client names.

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2. US persons who have signature authority over a trust account

US persons with signature authority over a trust account have different filing requirements. Any person who has authority (alone or in conjunction with another individual) to control funds or other assets in a financial account by direct communication (whether in writing or otherwise) with the person maintaining the account has signature authority over that account.

A US person with signature authority but no financial interest in 25 or more non-US accounts is required to fill out

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Services for lawyers

Law Society Practice Advisors

Dave Bilinsky
Barbara Buchanan
Lenore Rowntree
Warren Wilson, QC

Practice Advisors assist BC lawyers seeking help with:

- Law Society Rules
- Code of Professional Conduct
- practice management
- practice and ethics advice
- client identification and verification
- client relationships and lawyer/lawyer relationships
- enquiries to the Ethics Committee
- scams and fraud alerts

tel: 604.669.2533 or 1.800.903.5300.

All communications with Law Society Practice Advisors are strictly confidential, except in cases of trust fund shortages.

Optum Health Services (Canada) Ltd. –

Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articulated students and their immediate families.
tel: 604.431.8200 or 1.800.663.9099.

Lawyers Assistance Program (LAP) –

Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articulated students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no additional cost to lawyers.
tel: 604.685.2171 or 1.888.685.2171.

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articulated students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson Anne Bhanu Chopra at tel: 604.687.2344 or email to achopra1@novuscom.net.

DISCIPLINE ADVISORY

Reporting a mortgage discharge failure to the Law Society is mandatory

LAWYERS ARE REMINDED of their obligation to report to the Law Society the failure of a mortgagee to provide a registrable discharge of mortgage within 60 days of the closing of any real property transaction (Law Society Rule 3-96(b)(i)).

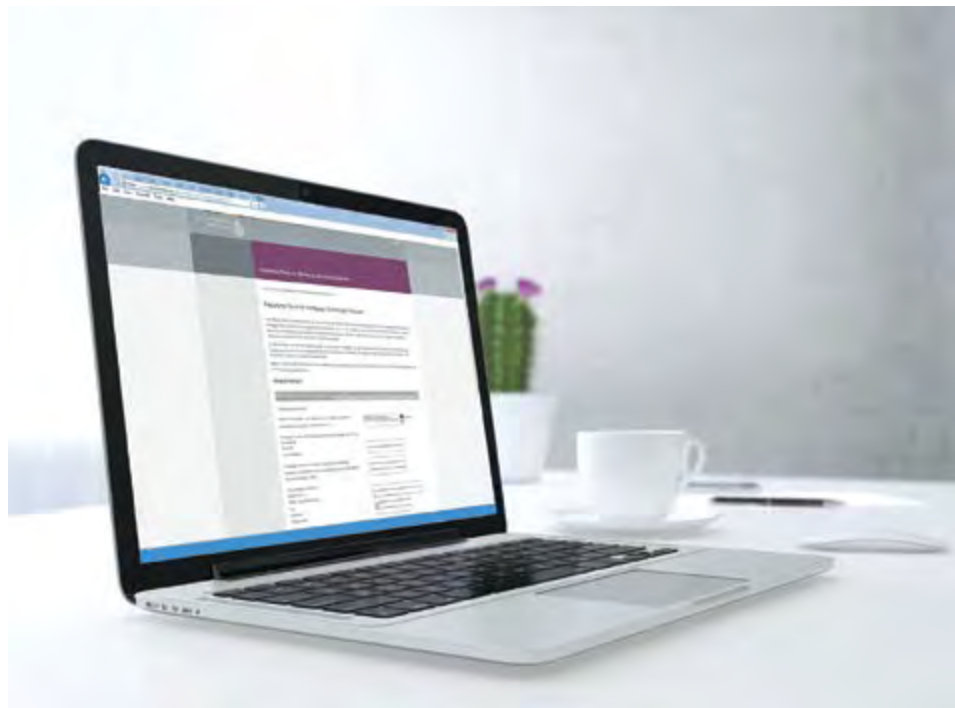
Rule 3-96(b)(ii) also requires lawyers to report to the Law Society the failure of another lawyer or notary to provide satisfactory evidence of the filing of a registrable discharge of mortgage within the 60-day period.

In the rule, "mortgage" includes a registered mortgage, debenture or trust deed containing a fixed charge on land or an interest in land (Rule 3-95).

To report a mortgage discharge failure, go to www.lawsociety.bc.ca/apps/thirtythirty_2/mortgage_report.cfm.

What does the Law Society do with mortgage discharge failure reports?

As a result of the Martin Wirick case, the Benchers implemented the 60-day reporting requirement to reduce the possibility for fraud. The Law Society's investigative analyst uses the information to determine whether there are situations that require



Law Society intervention or investigation.

Failure to report as required under Rule 3-96 can lead to disciplinary action.

For more information on reporting under Rule 3-96, contact Liza Szabo, Investigative Analyst at lszabo@lsbc.org. ❖

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Part I of the FBAR form (Form 114), which relates to personal information, and items 34-43 of Part IV, which relates to account owner information. The individual must also maintain records relating to account information. Again, "account information" does not include the names of your clients, beneficiaries to the trust. If the US person has signature authority but no financial interest in fewer than 25 accounts, then all of Parts I and IV must be completed unless that person is an employee of the account owner,

in which case only Part I and items 34-43 of Part IV need to be filled out. It is important to note, however, that in all cases, if the US person is an employee of the account owner, owner information only needs to be filled out once on the form, even if there are multiple accounts.

In none of the situations described above is client information to be included on the form. BC lawyers who are US persons or who have partners or employees who are US persons must maintain client confidentiality when filing an FBAR. In order to ensure that no confidential client information is disclosed, lawyers should be aware

of any US person with a financial interest in or signature authority over their trust accounts. If desired, a lawyer can file an FBAR on a US person employee's behalf, as long as that employee fills out an authorization form (Form 114a) and the lawyer fills out the third-party preparer section of the FBAR form.

Lawyers are encouraged to seek advice from a US tax lawyer concerning any questions regarding FBARs and the correctness and applicability of this information to their circumstances. The Law Society accepts no responsibility for any errors or omissions, and expressly disclaims such responsibility. ❖

Conduct reviews

THE PUBLICATION OF conduct review summaries is intended to assist lawyers by providing information about ethical and conduct standards.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee, which may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review pursuant to Rule 4-4, rather than issue a citation to hold a hearing regarding the lawyer's conduct, if it considers that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, including:

- the lawyer's professional conduct record;
- the need for specific or general deterrence;
- the lawyer's acknowledgement of misconduct and any steps taken to remedy any loss or damage caused by his or her conduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

COMMUNICATING DIRECTLY WITH REPRESENTED OPPOSING PARTY

During a break in court proceedings, a lawyer spoke directly to an opposing party in a family law dispute, in the absence of the opposing party's counsel. According to the lawyer, she had ongoing concerns with the opposing party's daughter's influence in the proceedings. A conduct review subcommittee advised the lawyer that her conduct breached rule 7.2-6 of the *Code of Professional Conduct for British Columbia*. The subcommittee discussed the problems that could have arisen if the exchange became an issue in the proceedings, and the potential prejudice to her own client if she had to give evidence of that exchange. The lawyer recognized that her actions were inappropriate and unhelpful. She advised she would seek advice from a practice advisor or senior colleague if she had similar concerns about an opposing party's independence in the future. (CR 2015-12)

LAND TITLE ACT, ELECTRONIC FILINGS

A lawyer provided her password to her assistant to allow her assistant to affix her digital signature when discharging one or two mortgages, in contravention of her agreement with Juricert (the certification authority) and s. 168.3 of the *Land Title Act*. The lawyer voluntarily admitted during a compliance audit of her practice that she had done so. A conduct review subcommittee

found, and the lawyer acknowledged, that her conduct was inappropriate. She stated it happened once only, partially due to her absence from the office for medical reasons and her concern that the discharges had to be filed within 60 days. The subcommittee noted that the lawyer appeared to be professionally isolated and made some recommendations to address those concerns. The lawyer has also taken steps to avoid similar misconduct in the future. (CR 2015-13)

CLEARING AGED TRUST BALANCES

During a compliance audit, it was discovered that a lawyer transferred several small unclaimed trust balances to his firm's general account, contrary to then Law Society Rule 3-56(1) (now Rule 3-64(1)).

A conduct review subcommittee advised the lawyer that, even though the amounts of money were small and it was difficult, time-consuming, and expensive to deal with those funds properly, it was his obligation as a lawyer to do so.

The lawyer acknowledged the impropriety of his conduct and assisted in the investigation. He did not seek to make excuses but noted that, at the time of the improper transfers and invoices, he was experiencing considerable stress due to his wife's illness.

The audit identified 31 improper transfers and, after undertaking a review of all files, the lawyer identified and self-reported 18 additional matters. He promptly rectified all 49 errors by returning the funds to the proper parties.

The lawyer has implemented new procedures at his office that will assist him in returning small trust balances to the proper parties with fewer administrative difficulties. He now requires clients to provide the details of their bank accounts so that the funds can be transferred to their accounts directly. Many of the trust balances resulted from clients failing to cash the cheques he sent to them returning small amounts left in trust. (CR 2015-14)

DISHONOURABLE CONDUCT

During telephone conversations with staff at a health care centre, a lawyer misrepresented to them that he was his client and made inappropriate and offensive comments. A conduct review subcommittee advised the lawyer that his conduct was not of the standard expected of lawyers and was contrary to rules 2.2-1,

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Credentials hearings

Law Society Rule 2-69.1 provides for the publication of summaries of credentials hearing panel decisions on applications for enrolment in articles, call and admission, and reinstatement.

For the full text of hearing panel decisions, visit the [Hearing decisions](#) section of the Law Society website.

PATRICK MICHAEL FITZMAURICE

Hearing (application for enrolment): July 15, 2014

Panel: Philip Riddell, Chair, Jasmin Ahmad and Satwinder Bains

Decision issued: November 7, 2014 (2014 LSBC 54)

Counsel: Henry Wood, QC for the Law Society; Morgan Camley for Patrick Michael Fitzmaurice

BACKGROUND

In Patrick Michael Fitzmaurice's Application for Temporary Articles Enrolment, he disclosed an extensive history of charges under the *Criminal Code* and charges under the *Motor Vehicle Act*:

- six criminal charges between 1996 and 2006, including possession of a restricted weapon, possession for the purpose of trafficking, and mischief under \$5,000; and
- 40 motor vehicle charges between 1996 and 2013, including 18 for speeding.

As a result of moving several times during his childhood and adolescence, Fitzmaurice developed a sense of alienation and isolation and was subjected to bullying. In defence, he developed a reputation for fighting back, which allowed him to make friends. Unfortunately, the peer group that provided that sense of belonging entertained themselves by stealing bicycles and breaking into cars.

In 1995, when he was 17 years old, Fitzmaurice enrolled in an adult program to complete high school and began pursuing a career as a pilot. By the age of 23, he was taking steps to lead a positive and productive life.

In 2001, Fitzmaurice was involved in a motor vehicle accident that resulted in, among other things, facial injuries requiring five to six surgeries. The difficult recovery process caused a period of depression and symptoms of post-traumatic stress disorder (PTSD). He successfully received treatment from a psychiatrist.

Fitzmaurice again took steps to pursue a career in aviation. In

2002, shortly after completing his flight instructor's training, Fitzmaurice was involved in a second motor vehicle accident in which he suffered significant injuries to his arms and tendons. Those injuries took three years of surgery to resolve and ended the possibility of a career in aviation.

Fitzmaurice again received psychiatric treatment for severe symptoms of PTSD and depression.

At the end of 2002, during his recovery from the second accident, Fitzmaurice moved to Toronto. He began to consider pursuing a career in criminal law, based primarily on the positive influence of his uncle who was a criminal defence lawyer.

In 2006, Fitzmaurice returned to Vancouver and enrolled in Langara College. In 2009, he entered UBC in an undergraduate program and then law school in 2011.

While in law school, Fitzmaurice actively participated in the Law Students' Legal Advice Program and Pro Bono Students Canada, to help others in need.

DECISION

There was no doubt that Fitzmaurice's extensive history of criminal and motor vehicle charges was reflective of conduct that was far less than exemplary. However, the evidence revealed a marked decrease in the incidents of criminal conduct, and eventually the complete absence of any criminal conduct in the past 10 years. He had not received any speeding tickets since starting law school.

Fitzmaurice is no longer under psychiatric care and has made positive strides, not only in his own life, but also for the benefit of others.

Fitzmaurice was candid and forthcoming in the application process, in giving his evidence before the panel and in the full disclosure of that past to the references who provided letters in support of his application.

While Fitzmaurice attributed his criminal behaviour to his unstable childhood and to the trauma of the two motor vehicle accidents, he did not use either to excuse his past or to diminish responsibility for his conduct. Rather, he is hopeful that his experiences, perspective and insight will enable him to relate to, and therefore better advocate for, many of the clients who will use him as their criminal lawyer.

In the panel's view, all of these factors were clear indicators of his rehabilitation. Together, they highlighted that Fitzmaurice