

- CRA advance rulings at www.cra-arc.gc.ca/tx/txprfssnls/srvcs/menu-eng.html.

7. I am considering a space share arrangement — what issues should I bear in mind?

First, refer to [rules 3.4-42 and 3.4-43](#) of the *BC Code*. Then read the article “Lawyers Sharing Space” on our website (Lawyers > Practice Support and Resources > [Lawyers Sharing Space](#)). We recommend you call the Practice Advice department if you have specific questions or scenarios.

8. Where can I find information on dealing with client files?

There are two helpful articles on our website; go to Lawyers > Practice Support and Resources > [Client Files](#). Read “Closed Files: Retention and Disposition” for information on what to keep and for how long, including information on secure destruction of physical and electronic documents. “Ownership of Documents in a Client’s File” explains the ownership of file contents.

9. I am a sole practitioner and I am considering retirement — what do I need to think about?

If you are still at the planning stage for retirement, see the succession plan information on the Law Society website (Lawyers > Practice Support and Resources > [Practice Coverage and Succession Planning](#)). Succession planning is an important consideration for any sole or small firm practitioner in advance of retirement. If you are actually beginning the process of winding down, see the article “Winding Up a Sole Practice: A Checklist” (Practice Support and Resources > [Closing a law practice](#)).

10. When do I have to report myself or another lawyer to the Law Society?

On the financial side, there are rules about reporting judgments, insolvency and trust shortages. Law Society [Rule 3-50\(1\)](#) requires a lawyer against whom a “monetary judgment” (defined in Rule 3-47) is

entered and who does not satisfy the judgment within seven days after the date of entry to notify the Executive Director in writing immediately. Rule 3-51 requires an “insolvent lawyer” (defined in Rule 3-47) to immediately notify the Executive Director in writing that he or she has become an insolvent lawyer and deliver the information and material described in that rule. A lawyer must immediately make a written report to the Executive Director, including all relevant facts and circumstances, if the lawyer discovers a trust shortage greater than \$2,500, or is or will be unable to deliver up, when due, any trust funds held by the lawyer (Rule 3-74).

Lawyers, articulated students, practitioners of foreign law and applicants must report criminal charges in writing to the Executive Director (Rule 3-97).

Code [rule 7.1-3](#) requires a lawyer to report to the Law Society a number of other circumstances, only one of which explicitly refers to money, i.e., a shortage of trust funds. The most frequent question asked of Practice Advisors about this rule is whether a lawyer has to report a breach of undertaking. The rule requires a lawyer to report a breach of undertaking that has not been consented to or waived. Sometimes the lawyer who has been the recipient of the undertaking will waive or consent to the breach when his or her client has not been materially prejudiced; waiver or consent can occur after the time for fulfillment of the undertaking has passed. The Intake and Early Resolution department of the Law Society is of the view that lawyers must also self-report their own breaches of undertaking, as well as breaches by other lawyers. See Code rule 7.1-3 for all the other types of matters that must be reported to the Law Society.

Another frequent question is whether a lawyer should report another lawyer for incivility or bullying. This is not required, but it may be reported if the lawyer feels it is warranted. Lawyers are encouraged to call a Practice Advisor to discuss reporting a lawyer to the Law Society as it is a serious matter. ❖

Services for lawyers

Law Society Practice Advisors

Dave Bilinsky
Barbara Buchanan, QC
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: achopra1@novuscom.net.

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. The review may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review, 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 the misconduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

CLEARING AGED TRUST BALANCES

A lawyer acted improperly by issuing invoices for disbursements that did not accurately or sufficiently describe the services provided. The lawyer was acting for clients in conveyancing matters and issued trust cheques to clients to reimburse funds held in trust for insurance binder fees. When the clients did not cash the cheques and they became stale-dated, the lawyer reversed the cheques and instructed staff to prepare invoices for disbursements in an amount equal to the funds remaining in trust. The invoices were mailed to the respective clients, and the funds were removed from trust contrary to then Law Society Rule 3-56(1)(b) (now Rule 3-64). A compliance audit of the lawyer's trust account identified nine such invoices in which the binder refund cheques were categorized as disbursements and the funds were removed from trust. The lawyer was not aware of the proper procedure for handling unclaimed trust balances. The lawyer now understands that the invoice for disbursements misrepresented what was being done and was inaccurate as those disbursements, as described, were not incurred but were simply an expedient way to deal with the funds remaining in trust. The lawyer expressed remorse to the conduct review subcommittee and no longer invoices clients in this way to deal with unused funds. (CR 2016-05)

LAND TITLE ACT ELECTRONIC FILINGS

A lawyer failed to strictly comply with s. 168-9 of the *Land Title Act*, Law Society Rule 3-64(8)(b) and rule 6.1-5 of the *Code of Professional Conduct for British Columbia* regarding the use of her personal digital signature in electronic filings. A compliance audit conducted by the Law Society revealed that the lawyer provided her password to

staff members and allowed them to sign electronically conveyancing documents for submission to the Land Title Office. The lawyer had reviewed and approved the form and content of the documents before staff affixed her signature. The lawyer stated that this process gave her some comfort that the electronic signature was only used after the forms were reviewed and manually signed by her. The lawyer changed her password immediately after the audit revealed the problem. She read the terms and conditions of the Juricert Agreement, the relevant section of the *BC Code* and Law Society Rule 3-64(8)(b). A conduct review subcommittee accepted that the lawyer now understands the underlying reason for the confidentiality of passwords and the importance of lawyers personally affixing their electronic signatures. The subcommittee recommended that the lawyer explain the importance of the electronic system to staff to avoid improper use of the system or fraud. (CR 2016-06)

REPORTING CHARGES TO THE LAW SOCIETY

A lawyer breached Law Society Rule 3-90 (now Rule 3-97) by failing to report to the Law Society charges relating to a driving offence. The lawyer, while prohibited from driving due to a 90-day roadside suspension, was stopped by police while driving. The lawyer had consumed alcohol earlier that evening. The lawyer panicked and knowingly provided false information, including a false name and false date of birth, to the police officer investigating his driving, contrary to rules 2.1-2, 2.1-5, 2.2-1 and 2.2-2 of the *Code of Professional Conduct for British Columbia*. The lawyer was charged with driving while prohibited, impaired driving, driving with a blood alcohol level over .08, and obstruction. It was only after the lawyer retained counsel that he learned he was required to report the charges to the Law Society, which he then did. He pleaded guilty to driving with undue care and attention and driving while prohibited. The other charges were stayed. The lawyer told a conduct review subcommittee that, looking back, his actions were embarrassing and shocking to himself. The lawyer reached out to others and worked on improving personal relationships. He took steps to improve his health and advised that he has been successful in those efforts. He acknowledged the importance of lawyers conducting themselves with honour and integrity. The lawyer assured the subcommittee that he will not repeat similar misconduct in the future. (CR 2016-07)

FALSE OR MISLEADING STATEMENTS

A lawyer failed to exercise adequate care in reviewing documents that sought substantial public funding before signing and submitting them. The documents contained false and misleading information, contrary to Chapter 1, Rule 1, Chapter 2, Rule 1, Chapter 3, Rule 3 and Chapter 4, Rule 6 of the *Professional Conduct Handbook* then in force. The lawyer was a director of a government-funded non-profit association. The lawyer was also a director of a for-profit company that

was intended to become the general partner in a fund designed to raise and direct private investment funding to organizations focused on innovation in an industry. The lawyer received no compensation for his work as a director for either the association or the company.

At a directors' meeting, the lawyer was asked to sign documents pertaining to the application for funding, including a post-dated invoice, claiming payment for salaries and other expenses that had not yet been incurred. The lawyer took the documents with him to review, but claimed not to have had the time to do so. Sometime later, the lawyer was prompted again to sign the documents immediately. The lawyer signed all the documents without giving them further consideration. The requested funding was never advanced and the non-profit association demanded evidence of the expenses shown on the invoice. When none was produced, a police investigation commenced on the suspicion of fraud, but resulted in no charges being laid. The lawyer admitted he was careless and was remorseful.

A conduct review subcommittee advised the lawyer that his conduct was inappropriate because he was negligent, specifically in failing to review carefully the documentation that he signed as a director and in not taking adequate care to investigate his concerns with the company representatives, either as counsel or as a director of the company. The lawyer assured the subcommittee that, while he continues to sit as a director outside his practice on a volunteer basis, he carefully reads all documents and takes the time and attention necessary for the task. The subcommittee explained the concept of progressive discipline and, if this were to occur again, a citation could be issued for his misconduct. (CR 2016-08)

FAILURE TO SUPERVISE STAFF

A lawyer admitted that he had not properly supervised his staff on a conveyance, contrary to rules 6.1-1 and 6.1-3 of the *Code of Professional Conduct for British Columbia*. The lawyer acted for the purchaser of a manufactured home. Letters of undertaking were exchanged between the lawyer and the vendor's lawyer. Although the letter containing the undertaking purported to have the lawyer's signature on it, he did not personally sign it. The letter was signed by the lawyer's paralegal. The registration documents were provided to the lawyer on his undertaking not to register the transfer of the home until he had sufficient funds in his trust account to cover all sale proceeds, including the final advance. The lawyer relied upon the lender's assurances that he would receive the funds. The lender subsequently forwarded those funds directly to the borrower, and the lawyer did not receive the funds. The lawyer said that he was not aware of the undertaking until a few months later but, had he been aware, his practice was to take all funds into trust from the financial institution so that he would have control over the funds. However, as the lawyer had not properly reviewed or supervised his paralegal's conduct of the file, he never contacted the lender to verify that funds would be available.

A conduct review subcommittee advised the lawyer that his conduct was inappropriate because he allowed his staff to assume a level of

control of his file that exceeded the proper level of authority. The events of the transaction resulted in the lawyer being unable to comply with the undertaking. As a result, the lawyer violated Chapter 11, Rule 7 of the *Professional Conduct Handbook* (in force until January 1, 2013) and rules 7.2-11, 6.1-1 and 6.1-3 of the *BC Code*. The lawyer acknowledged that he has to increase the level of his supervision of his paralegal, and he has taken steps to rectify his conduct. The subcommittee set out specific steps for the lawyer to take to avoid or prevent a similar problem and to be aware that if he fails to improve his conduct a citation may be issued in respect of any further misconduct. (CR 2016-09)

BREACH OF TRUST CONDITIONS

A lawyer breached trust conditions imposed on her when she received \$4,000 in trust in partial settlement of an action commenced by the lawyer's client and paid \$3,000 of those funds to the client and \$1,000 for fees, contrary to one or both of Chapter 11, Rule 7 of the *Professional Conduct Handbook*, then in force, and Law Society Rule 3-65(7). The terms of the settlement required the defendants collectively to pay \$12,000 to the plaintiff. The settlement funds were to be made payable to the lawyer's law corporation in trust for the plaintiff by a set date. If the full settlement funds were received, all claims or cross-claims in the action would be settled. However, if the settlement payment was not received, the trial would continue. Although it was past the due date, the lawyer received \$4,000 payable to her firm in trust from two of the defendants, in full and final settlement of the matter. Payments were not received from the other defendants. The lawyer was not at liberty to disburse the money except for the purpose for which it was entrusted to the lawyer, which was to pay the settlement amount. The lawyer did not acknowledge the undertaking when the funds were received. The lawyer did not understand that the funds belonged to the opposing party and were held by the lawyer in trust for that party, until the undertaking was complied with. The lawyer took the position that there was no breach of an undertaking.

A conduct review subcommittee advised the lawyer that the conduct was inappropriate because, prior to paying out the \$4,000 in settlement funds, the lawyer did not take any steps either to obtain instructions from the client or to clarify from the two defendants whether the funds could be disbursed, particularly where the payment of the settlement funds was not in accordance with the terms of the settlement. The lawyer also failed to notify the defendants who paid the \$4,000 that the action was not settled. The lawyer did not accept that there were trust conditions attached to the \$4,000 settlement proceeds and took the position that any trust conditions were ambiguous at best. The subcommittee felt that the issue was one of competence and not honesty or ethics. It was troubled by the lawyer's adamant refusal to acknowledge that the transaction was handled in an inappropriate manner. The subcommittee recommended that the lawyer be referred to practice standards. The Discipline Committee subsequently accepted the recommendation and referred the lawyer to practice standards. (CR 2016-10) ❖

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.

LYLE DANIEL PERRY

Review: September 23, 2015

Review board: Maria Morellato, QC, chair, Jasmin Ahmad, Dennis J. Day, Miriam Kresivo, QC, Richard Lindsay, QC, Jamie Maclaren and June Preston

Decision issued: December 3, 2015 ([2015 LSBC 55](#))

Counsel: Jean Whittow, QC for the Law Society; Henry Wood, QC for Lyle Daniel Perry

BACKGROUND

Lyle Daniel Perry had previously been called to the bar in South Africa. After immigrating to Canada, he engaged in the unauthorized practice of law by offering and providing legal services. The Law Society directed Perry to immediately cease practising law and to sign an undertaking not to engage in the practice of law. Perry signed and returned the undertaking in December 2011. Concerns were raised regarding whether he had engaged in the unauthorized practice of law after signing the undertaking and, if so, if he had done so knowingly.

At a credentials hearing into Perry's application for enrolment in 2014, the majority of the hearing panel concluded Perry is a person of "good character and repute" and allowed him to be admitted to the Law Society Admission Program. The chair of the panel disagreed with the majority decision: see hearing decision [2015 LSBC 13](#) and the credentials summary in the *Summer 2015 Benchers' Bulletin*.

The Credentials Committee applied for a review of the hearing panel's decision.

DECISION OF THE REVIEW BOARD

The review board determined that the hearing panel majority correctly assessed Perry's character.

The review board highlighted the distinction between conduct and character. After an independent analysis of Perry's character in respect of every allegation and finding of improper conduct, the hearing panel majority concluded that, while the conduct itself was improper, it did not necessarily reflect "bad character" given the circumstances.

The review board determined that the hearing panel majority did not place undue reliance on Perry's testimony, considered each concern that gave rise to the credentials hearing and provided detailed reasons and findings in its assessment of Perry's character.

The review board confirmed the decision of the hearing panel majority that Perry is a person of good character and fit to be admitted into the Law Society admission program.

APPLICANT 8

Review: January 28, 2016

Review board: Gregory Petrisor, chair, Ralston S. Alexander, QC, Glenys Blackadder, Craig Ferris, QC, Jamie Maclaren, June Preston and Sandra Weafer

Decision issued: March 22, 2016 ([2016 LSBC 12](#))

Counsel: Gerald Cuttler for the Law Society; Michael Tammen, QC for Applicant 8

BACKGROUND

Applicant 8 was involved with a criminal proceeding in 2013 concerning the alleged assault of his wife and the circumstances surrounding those charges. The proceedings were resolved when the applicant entered into a recognizance that required him to admit there were reasonable grounds to fear that he would cause personal injury to his spouse.

At a credentials hearing into Applicant 8's application for enrolment held February 2-5, 2015, a majority of the panel concluded that the applicant does not have such a defect in character that it should prevent him from starting on the road toward becoming a lawyer and granted his application to become enrolled as an articulated student. One panel member dissented, stating that the facts and submissions did not inspire confidence that Applicant 8's character defects would not resurface when he faces the pressure, conflicts and disagreements that lawyers must routinely cope with in an objective and balanced fashion. (See hearing decision [2015 LSBC 23](#) and the summary in the *Fall 2015 Benchers' Bulletin*.)

The Credentials Committee referred the hearing panel's decision for a review on the record.

DECISION OF THE REVIEW BOARD

The review board found that the hearing panel erred in failing to recognize the test of character is the same for admission as an articulated student as it is for admission as a member of the Law Society. The test for character is identical for applicants regardless of the nature