

another firm. In August 2016, an Ontario lawyer's email address was spoofed, directing a client to wire funds to a different bank account to complete a purchase, citing a restructuring of the firm's finance department. A follow-up phone call was reportedly made to the client, which displayed the lawyer's firm number.

## HOW DO YOU PROTECT YOURSELF?

See our web page, [Fraud: Alerts and Risk Management](#), for more information about how to identify the bad cheque scam and other fraud schemes. Become familiar with the [bad cheque scam names and documents list](#) as well as the common characteristics and red flags and ongoing twists and developments. Review the bad cheque scam names and documents web page as part of your firm's intake process, particularly if the client makes initial contact by email and professes to be outside of Canada. If the potential client's name is not on the list, do a Google search of the name and the other party's name. A name search combined with the word "fraud" or "scam" may bring up information about a legitimate business whose cheques were altered or counterfeited by a scamster. There is an abundance of information on the Internet about scams.

Follow the client identification and verification rules (Rules 3-98 to 3-109). Compliance with the rules is a prerequisite for coverage under the compulsory policy's [trust shortage liability insurance](#), if a lawyer suffers a trust shortfall as a result of the bad cheque scam. Download the Client Identification and Verification Procedure Checklist in the [Practice Checklists Manual](#) and read the related [frequently asked questions](#) in the Practice Resources section of our website. Appendix 1 of the checklist is a sample attestation for the verification of identity of a client who is in Canada, but not physically present before the lawyer. Appendix II is a sample agreement between the lawyer and the lawyer's agent to verify the identity of a client who is outside of Canada (frequently claimed to be the case in the bad cheque scam). Appended to the agreement is a sample attestation form for the agent's use. Select the commissioner, guarantor or agent yourself so that you do not fall victim to setting up the situation for a potential scammer to provide you

with a phony attestation.

If you suspect it is a bad cheque scam, either decline to act or require payment to be made directly between the parties rather than through your trust account.

Watch the free webinar for lawyers, [The bad cheque scam – don't get caught](#), available in the [Practice Resources](#) section of our website (one-hour CPD credit available).

Appoint someone in your firm to keep lawyers and relevant staff up to date with information from the Law Society. Subscribe to the [Fraud Alerts RSS feeds](#) and encourage non-lawyer staff to subscribe. Staff can also [sign up for free electronic subscriptions](#) to the *Benchers' Bulletin* (includes Notices to the Profession and E-Brief).

Consult with your IT professional regarding your antivirus software, strong passwords and other security information. Speak with your bank about other steps that you can take to enhance security, including the advantages of receiving trust funds electronically.

If you need commercial liability insurance, buy it. Although the compulsory policy provides some coverage for the bad cheque scam if the prerequisites are met, it does not otherwise respond to thefts or trust shortages caused by frauds. However, insurance is available commercially for various forms of fraud. Talk to your broker about what is available. For more information and a list of brokers, read our web pages, [Other commercial liability insurance products: Protection for claims that our policy does not cover and List of excess and other commercial liability insurance brokers](#).

Report potential new scams by sending an email to [fraud@lsbc.org](mailto:fraud@lsbc.org). Call a practice advisor for advice if you are uncertain about how to apply the client identification and verification rules or want other confidential advice.

Report confirmed scams to the Government of Canada's [Canadian Anti-Fraud Centre](#) (CAFC). Although fraud attempts against lawyers are not specifically targeted, the CAFC collects information and criminal intelligence regarding various types of fraud complaints. In addition, they provide information and resources to protect yourself, such as the [Get Cyber Safe Guide for Small and Medium Businesses](#). ❖

## 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 for British Columbia*
- 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.*

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**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.

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**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](mailto: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 contrary to Law Society Rule 3-64(1) by improperly authorizing the transfer of residual trust balances to her firm's general account on 12 client matters. Further, she failed to adequately supervise her staff contrary to Chapter 12, Rules 1 and 3 of the *Professional Conduct Handbook* then in force and rules 6.1-1 and 6.1-3 of the *Code of Professional Conduct for British Columbia*. A compliance audit revealed that the firm had developed a long-standing practice of clearing small trust balances on conveyance files by rendering dummy accounts on the files and writing trust cheques to pay the accounts. The accounts were never provided to the client and were generated by describing disbursements that had not been incurred. This practice was in place prior to the lawyer joining the firm and the Law Society's investigation revealed that no lawyer in the firm was aware of the practice. The investigation revealed that \$185.16 was improperly transferred on 19 files, 12 of which were the responsibility of this lawyer. The lawyer was also responsible for the conveyancing department. As such, she acknowledged and accepted full responsibility for the misbehaviour of the staff member who was creating the dummy accounts to clear out small trust balances that remained when a file was about to be closed. A conduct review subcommittee advised the lawyer that her conduct was inappropriate because she was the signatory on the trust cheques that transferred the money from trust to the firm's general account where the supporting account for legal fees was never provided to the client. Though the amounts of money transferred in these circumstances were modest, the sanctity of the trust accounting rules must be respected. The lawyer acknowledged that she should have undertaken a thorough review of the systems

in place when she assumed responsibility for the conveyancing department. She arranged for the firm to reimburse all clients that had been the subject of false accounts and implemented a different process for closing files in which a small balance remained in trust. The subcommittee was satisfied that neither this lawyer nor any other lawyer in the firm was aware of the non-compliant approach to clearing small trust balances that was being undertaken by the law firm staff. (CR 2016-11)

A second lawyer from the law firm referenced in the above conduct review summary authorized the transfer of residual trust balances to his firm's general account on seven of the 19 files referred to above, contrary to Law Society Rule 3-64(1). The lawyer acknowledged his responsibility for inappropriately signing the trust cheques. He confirmed his understanding of the accounting rules and acknowledged that the practice that had been adopted to clear out small trust balances with cheques drawn on the firm's trust account was entirely inappropriate. The lawyer accepted full responsibility for his own misconduct, though he suggested that the primary responsibility for the misbehaviour resided with the lawyer then in charge of the conveyancing department. The subcommittee felt that his suggestion overlooked the fact that the system used in this improper manner had been in place for many years prior to the engagement of the lawyer who then had responsibility for the department. In the subcommittee's view, this lawyer did not fully acknowledge responsibility for the institutional systemic inadequacies that were clearly in place during the time period that he had a hands-on connection with that department. The lawyer assured the subcommittee that he has adopted an appropriate method to see that these circumstances will not be repeated. He will not sign trust cheques other than those for which he has a direct responsibility arising from his own files. (CR 2016-12)

#### QUALITY OF SERVICE

A lawyer failed to serve her clients in a conscientious, diligent and efficient manner to provide a quality of service expected of a competent lawyer, contrary to rule 3.2-1 of the *Code of Professional Conduct for British Columbia*, by failing to attend to the filing of an application to obtain letters of administration within a reasonable time frame and failing to respond to reasonable requests for information from her clients. The lawyer also failed to maintain adequate supervision of her assistant, contrary to rule 6.1-1 of the *BC Code*, and failed to provide her clients' new lawyer with a prompt response to his requests for the file or information about the status of the file, contrary to rule 7.2-5 of the *BC Code*. The lawyer, who was retained to apply for letters of administration, relied heavily on her assistant to communicate with the clients and to complete the relevant documentation. An application was initially prepared and filed in a timely manner but it was rejected by the registry for a variety of reasons and was never

completed. Throughout the course of the retainer, the clients made numerous requests for information on the status of their file. When the clients retained a new lawyer and the new lawyer asked for the clients' file, the lawyer failed to respond promptly to the requests for the file or information on its status. The lawyer explained that, at the time, her assistant told the lawyer that one of the clients spoke with her assistant and confirmed that the file was not, in fact, to be moved. The client advised the Law Society that the assistant was mistaken. The lawyer admitted that she took no steps to verify the information from the assistant, either with the clients or new counsel, which again served to delay the transfer of the clients' file. The lawyer said that it was clear her office dropped the ball in processing the application and admitted that she failed to keep track of the clients' matter adequately. She agreed that she should have done better at supervising her assistant, but attempted to explain some of the delay on the file by recounting her assistant's personal circumstances. A conduct review subcommittee emphasized that, while difficulties in staffing arise and are understandable, it remains a lawyer's obligation to supervise staff and review and oversee all matters to ensure clients receive prompt and diligent service. The subcommittee reviewed the lawyer's office systems and processes and discussed areas for improvement. To avoid such failures in the future, the subcommittee recommended that the lawyer: (a) take steps, initiate office policies and, if needed, update her technology to ensure that she reviews all correspondence, including emails, from clients and others to determine what she needs to handle and what she can, with instructions and supervision, delegate to her assistant; (b) improve her bring-forward system to ensure that outstanding matters are properly tracked and followed up on; and (c) meet at least daily with her assistant to supervise the assistant's work and to determine if there are any issues that the lawyer needs to deal, or help deal, with directly. The subcommittee also recommended that the lawyer, her assistant and anyone else communicating regularly with clients or other counsel take the Communications Toolkit course available on the Law Society's website. (CR 2016-14)

### BREACH OF UNDERTAKING

In representing a vendor in a real estate matter, a lawyer breached his undertakings by failing to obtain a discharge in a timely manner, failing to promptly attend to the registration of the discharge and failing to provide particulars of the registration, all contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer also failed to respond to opposing counsel's communications about the charges that remained on title, contrary to rule 7.2-5 of the *BC Code*. The lawyer submitted four Form C releases to the Land Title Office (LTO) in one package to discharge four mortgages on the property. The LTO rejected the package because the name of one charge holder had changed. The lawyer failed to take any steps to fix the defect notice and to communicate with the purchaser's counsel again until after the complaint was made to the Law Society. The lawyer acknowledged that he did not address the name change in a

timely fashion and, because of that, all of the releases were cancelled. A conduct review subcommittee discussed with the lawyer the obligation to fulfill all undertakings and the importance of undertakings to the profession. He should have immediately advised purchaser's counsel of the LTO defect so purchaser's counsel could speak to his clients about why the charges were still on title months later. The lawyer admitted his conduct was inappropriate and expressed regret. He wrote a letter of apology to purchaser's counsel and the subcommittee accepted that his apology was heartfelt. The lawyer also volunteered to take various steps to avoid being involved in this type of conduct again. (CR 2016-13)

In representing a client in the sale of real property, a lawyer breached an undertaking that required her to pay outstanding property taxes and penalty upon receipt of sale proceeds, contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer also failed to provide prompt service to her client when she failed to take steps to clear title to the property for approximately nine months after the transaction closed, contrary to rule 3.2-1 of the *BC Code*. The lawyer admitted that she had been remiss in not ensuring that the property taxes were paid, but maintained that it was an error based on an overly cursory review of a tax receipt provided by the client, that she relied primarily upon her assistant to contact the client and that she acted diligently in remediating the error once it was discovered. A conduct review subcommittee pointed out that the receipt was out of date and the error was only discovered when the other party's notary reminded her of the undertaking months later. The property taxes were paid by the client, rather than the lawyer, and paid approximately six months after the initial undertaking and four months after the reminder was sent. The lawyer indicated that she relied on her assistant to ensure the matters relating to the undertakings were completed and did not pay attention to the steps or efforts the assistant was taking, nor to the particular wording of the undertakings. The lawyer admitted the breaches of undertaking, expressed an understanding of the importance of fulfilling undertakings in a prompt and diligent fashion, and acknowledged that her delict lay in an overreliance on her assistant, but expressed no clear intention or awareness of how to remediate or otherwise prevent similar occurrences in the future. The lawyer accepted the subcommittee's suggestion that reading the undertakings more carefully may have gone some distance to alleviate the difficulties. The subcommittee made several recommendations to the lawyer, including to implement office policies and regular meetings with her assistant, to supervise her work and to determine what she needs to handle herself and what she can, with instructions and supervision, delegate to her assistant. (CR 2016-15)

### THREATENING CRIMINAL OR REGULATORY PROCEEDINGS

A lawyer threatened an opposing party, through his counsel, with criminal or quasi-criminal proceedings, in an attempt to gain a

benefit for a client, contrary to rule 3.2-5(a) of the *Code of Professional Conduct for British Columbia*. The lawyer represented a client in a family law matter concerning spousal support and other issues. The opposing party was on disability income through the Canada Pension Plan. During the course of negotiations, the lawyer sent an email to opposing counsel alleging that the opposing party was not suffering from a disability and was engaging in work and not reporting income. The lawyer stated he had evidence of the opposing party's activities to prove this deceit and suggested that this evidence would become public in the course of a trial but that the opposing party could take a "better course of action." The lawyer believed he did not violate the letter of rule 3.2-5(a), but acknowledged that he could have done better in both what he said and how he handled the situation. A conduct review subcommittee advised the lawyer that, not only was his conduct inappropriate for the possible breach of the rule, but also the issue seemed symptomatic of broader issues. As an example, it was pointed out to the lawyer that the tone of some of his letters would be seen as insulting to other counsel and that this did not serve in negotiating a settlement of his client's cause. The lawyer explained that he acted out of frustration but agreed that did not give him an excuse to behave in the manner he did. The lawyer acknowledged that he could not handle the stresses of practice on his own and explained various steps he was taking to address that. The subcommittee emphasized the need for the lawyer not to become isolated from others but advised the lawyer they were encouraged by the steps he had taken thus far and encouraged him to continue to do so and not to be afraid to seek help when needed. (CR 2016-16)

### IMPROPER BILLING

A compliance audit and subsequent investigation revealed that a lawyer accepted an assignment of a bill of costs when he already had a contingency fee agreement with the client, in breach of section 67(2) of the *Legal Profession Act* and Law Society Rule 8-1(2). He also failed to deliver to that client a bill for disbursements within a reasonable time by delaying two and a half years, in breach of section 69 of the Act. The investigation also revealed two instances in which the lawyer made fixed fee arrangements with clients and received payments characterized as "non-refundable" retainers, without advising the clients of their right to review under section 70 of the Act. The lawyer acknowledged his misconduct and agreed that taking a "non-refundable" retainer without specifically advising the client of the right to have the court review a bill or fee agreement was wrong and potentially misleading. The lawyer assured a conduct review subcommittee that he was aware of the relevant provisions of the Act and Rules and advised that he had not, since these matters had been brought to his attention, taken "non-refundable" retainers from clients. He further advised that he had not made any fixed fee arrangements with clients in that time, but if he were inclined to enter into a fixed fee arrangement, he would follow the recommendations he received from the Law Society staff lawyer and, if necessary, get advice from a practice

advisor. He advised he ensures clients are aware of their right to seek review of any fee agreement or bill. The subcommittee accepted that the lawyer seemed thoughtful and sincere and had carefully reflected on these matters. (CR 2016-17)

### CONFLICT OF INTEREST / OBSTRUCTION OF LAW SOCIETY INVESTIGATION

A lawyer acted in a conflict of interest by acting against a former client, contrary to Chapter 6, Rule 7 of the *Professional Conduct Handbook* then in force, by acquiring a financial interest in two corporations without complying with the requirements of Chapter 7, Rule 5 of the Handbook, and by providing legal services after having acquired a financial interest in two corporations, which would reasonably be expected to affect his professional judgment, contrary to Chapter 7, Rules 1 and 2 of the Handbook. The conflicts of interest arose as a result of the lawyer's representation of a client who, along with one other individual, was a shareholder of Company A and subsequent representation of Companies B and C in which the lawyer acquired a minority financial interest in lieu of payment and in consideration for the use of his office and administrative assistance. He acquired the financial interest without having Companies B and C acknowledge in writing that he was not representing them in the acquisition and that they should not rely on his advice in the matter, and without ensuring that Companies B and C were independently represented in all aspects of the acquisition. In addition, having earlier acted for the client and the other shareholder of Company A, the lawyer, at the request of Companies B and C, arranged for another lawyer to prosecute a lawsuit against the client and other shareholder of Company A. The lawyer briefed the other lawyer about the matter and provided him with most of his instructions. The client complained to the Law Society, after which the lawsuit was settled. The lawyer drafted a settlement agreement that contained a term requiring the withdrawal of the complaint to the Law Society, contrary to Chapter 2, Rule 1, Chapter 4, Rule 2 and Chapter 13, Rule 3(c) of the Handbook.

The lawyer stated that it had never occurred to him that he could not include a term in the settlement agreement concerning the withdrawal of the complaint. A conduct review subcommittee explained that the term was indefensible, even if the parties to the agreement promoted its inclusion, and that such terms undermine public confidence in the regulatory process by suggesting that investigations into lawyer conduct can be negotiated away. The lawyer expressed that he had not intended to thwart the investigation and he now understood he must not interfere with the discharge by the Law Society of its responsibilities as a governing body. As for acting against a former client, the lawyer did not previously understand, but now did, that his act of procuring, briefing and instructing the other lawyer in the lawsuit against the complainant constituted the practice of law. He understood he could not use confidential information against a former client and he would not allow such a thing to happen again. Regarding the conflict arising from his acquisition of a financial interest in and