

## 2014: No. 3 Fall Benchers' Bulletin item 1

### **Advancing funds to a client to cover the cost of disbursements, medical expenses or living expenses**

It is common practice for lawyers to pay the cost of client disbursements, particularly when clients are unable to afford them and the lawyer expects the funds to be recovered when the case is resolved. This practice is not contrary to the rules, and some court decisions have approved it: see *Franzman v. Munro* 2013 BCSC 1758 and *Chandi v. Atwell* 2013 BCSC 830 (currently on appeal). Less common, but a not infrequent practice, is when a client's financial situation compels a lawyer to advance funds to pay for the client's medical treatment or living expenses.

The *BC Code* has a number of provisions that restrict and regulate the circumstances under which lawyers can advance funds to clients. The following summary is intended to assist lawyers to stay within the rules.

When a lawyer pays the client's disbursements and charges interest on those costs, the lawyer must:

- disclose the charge in writing in a timely fashion (rule 3.6-1);
- ensure the charge is fair and reasonable (rule 3.6-1); and
- ensure the client consents to the charge (rule 3.6-1).

When a lawyer advances funds to a client to cover expenses other than disbursements (such as medical costs and living expenses), and charges interest on those costs, the lawyer must:

- disclose the charge in writing in a timely fashion (rule 3.6-1);
- ensure the charge is fair and reasonable (rule 3.6-1);
- ensure the client consents to the charge after receiving independent legal advice (rule 3.4-28); and
- be in compliance with *BC Code* rule 3.4-26.1, which prevents a lawyer from advancing funds to a client if there is a substantial risk that the lawyer's loyalty to or representation of the client would be materially and adversely affected by the lawyer's relationship with the client or interest in the client or the subject matter of the legal services. In practical terms, this means that a lawyer may not advance funds to a client if the advance would reasonably be expected to affect the lawyer's professional judgment. Depending on such matters as the size of the loan, the strength of the client's case, the client's chances of repaying the loan if the case fails and the lawyer's own financial circumstances, the loan may cause the lawyer to prefer his or her own interest in being reimbursed to that of the client's cause.

Lawyers who have questions about how these standards affect their practices may discuss the issue with a Law Society [practice advisor](#) or ask the [Ethics Committee](#) for guidance in a particular case.