

TO: The Executive Director and Madeline Harden

AND TO: [REDACTED]

FROM: Michèle Ross
Chair of the Discipline Committee

RE: [REDACTED]
Administrative Penalty File No. PE20240001

Pursuant to Rule 4-60 of Law Society Rules 2015 (the “Rules”), I am satisfied that the breach alleged in the above matter has been established on a balance of probabilities and I am also satisfied that the administrative penalty should be upheld.

The Rule Breached

1. [REDACTED] (“[REDACTED]”) is alleged to have breached Rule 3-102 (Requirement to verify client identity). A breach of this Rule occurs when a lawyer provides legal services in respect of a financial transaction and is therefore required to verify the client’s identity prior to completing the financial transaction but fails to do so.
2. [REDACTED] is alleged to have breached Rule 3-104 (Use of an agent for client verification). A breach of this Rule occurs when a lawyer fails to retain an agent to obtain the information required under Rule 3-102 and fails to have an agreement or arrangement in writing when a client is not present in Canada and is not physically present before the lawyer.
3. Based on the information before me, the above elements of the rule breaches have been met:
 - (a) [REDACTED] acted for [REDACTED] (“[REDACTED]”), [REDACTED] (“[REDACTED]”) and [REDACTED] (“[REDACTED]”) in a \$5,100,000.00 sale of a farmland.
 - (b) A financial transaction took place on March 18, 2022, when his firm received sale proceeds of \$4,585,521.71 into the firm’s trust account.

- (c) [REDACTED] failed to complete client verification requirements for [REDACTED] and [REDACTED] prior to the financial transaction.
- (d) As a result of the non face-to-face financial transaction, [REDACTED] was required to retain an agent and enter into an agency agreement with that agent who would comply with the client identification and verification Rule 3-104, in order to comply with the Rule.

Facts

4. [REDACTED] acted for [REDACTED] in a \$5,100,000 sale of [REDACTED], Nanaimo, BC (the "Sale") on client file # [REDACTED].
5. [REDACTED] received the initial instructions on this client matter from [REDACTED].
6. Although [REDACTED] met with [REDACTED] on numerous occasions over the years, he could not confirm viewing [REDACTED]'s identification at any point and there is no record of him verifying [REDACTED]'s identity.
7. [REDACTED], manager of [REDACTED], who was located in Virginia, USA at the time of the financial transaction, signed the sale documents on behalf of [REDACTED].
8. While [REDACTED] provided the initial instructions, [REDACTED] gave the closing instructions regarding the financial transaction.
9. On March 18, 2022, [REDACTED]'s firm received net sale proceeds of \$4,585,521.71 by trust cheque deposited into the firm's trust account by [REDACTED].
10. On the same day, a second financial transaction took place when [REDACTED]'s firm authorized a trust disbursement of \$2,543,480.65 to [REDACTED] for part of the sale proceeds. As a result, a financial transaction occurred to which Rule 3-102 applies.
11. [REDACTED] states that client verification for [REDACTED] had previously been obtained September 24, 2009 by way of an agreement with an agent, [REDACTED] ("[REDACTED]") ("2009 Agent Agreement"). The 2009 Agent Agreement was not signed by [REDACTED].
12. [REDACTED] provided evidence of verifying [REDACTED]'s identity by way of materials included in an email between [REDACTED], [REDACTED] and [REDACTED]'s paralegal, dated March 14, 2022 that contained an agent agreement ("2022 Agent Agreement") with Virginia Notary, [REDACTED] ("[REDACTED]") along with attested copied of [REDACTED]'s US passport and Virginia driver's license (the "Attested Documents").

13. [REDACTED] is an employee of [REDACTED] and was chosen by the client.
14. The 2022 Agent Agreement was undated and not signed by [REDACTED].
15. The 2022 Agent Agreement stated that [REDACTED] met with [REDACTED] (not [REDACTED]).
16. The Attested Documents stated that [REDACTED]'s driver's license was issued March 14, 2022 when in fact it was issued January 2, 2020.
17. On November 6, 2023, [REDACTED]'s firm emailed [REDACTED] requesting a revised attestation stating that [REDACTED] met with [REDACTED], not [REDACTED]. [REDACTED] provided the firm with updated documents ("Updated Attested Documents") on November 6, 2023. The Updated Attested Documents remained dated March 14, 2022. Further, the Agent Agreement remained undated and unsigned by [REDACTED].
18. On July 4, 2024, the Law Society issued a Notice of Penalty for breach of Rules 3-102 and 3-104 and levied an administrative penalty of \$5,000 payable by August 12, 2024, pursuant to Rule 4-59(3).
19. [REDACTED] filed a dispute under Rule 4-60 for a review of the penalty.

Submissions

[REDACTED]'s Submissions

20. [REDACTED] disputes the Administrative Penalty and says there was no breach of any rule and in particular Rules 3-102 and 3-104.
21. He submits that he correctly obtained client verification from [REDACTED] as the director of [REDACTED] on September 24, 2009, that client verification was correctly obtained at that time and no further verification was required for the transaction that occurred in March 2022. He relies on Rule 3-106.
22. [REDACTED] submits that having correctly verified [REDACTED] and [REDACTED] in 2009, there was no requirement to verify [REDACTED] in 2022.
23. [REDACTED] disputes the allegation that the attestation in 2022 contained incorrect information and that he did not enter into a direct agent agreement with the notary.

24. [REDACTED] submits that while there was incorrect information on the client identification and verification form for [REDACTED] in 2022, this error was corrected by the notary as soon as the error was detected. He submits that amounted to a clerical error that was not substantive insofar as the document “spoke for itself” and the notary had met with [REDACTED]. He further submits that in light of the client identification and verification form that was obtained in 2009, this error on the form becomes irrelevant.
25. Further, [REDACTED] submits that the act of the notary signing the 2022 Agency Agreement concludes that the agency agreement was entered into between him and the notary. He submits that Rule 3-104 does not require that he must make direct contact with the agent and that the Rule simply states he must retain an agent and have an agreement in writing. He submits that having a signed agreement meets the requirement. Further, he submits that by the notary signing the 2022 Agency Agreement, the notary was agreeing to act on his behalf as an agent, was contractually bound to act on his behalf and there was no need to have direct contact between the notary and his law firm. He submits that the notary was effectively retained by his law firm by signing the contract.
26. In [REDACTED]’s submissions dated August 1, 2024, he submits that [REDACTED]’s involvement was limited to providing a copy of the contract and some other limited communications. He submits that [REDACTED] was the director and signatory for the company and client identification and verification was obtained for him in 2009.
27. He further submits it would be unfair and unjust to censure his actions in 2022 as the entire effort to verify and identify was redundant and unnecessary.

Law Society’s Submissions

28. The Law Society submits that the definition of “client” in Division 11 is very broad and for the purposes of the client identification requirements, “client” includes both an organizational client *and* an individual instructing the lawyer on behalf of the organizational client. Rule 3-98 states:

Rule 3-98 (1) In this division,

“**client**” includes

- (a) another party that a lawyer’s client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer, and

(b) in Rules 3-102 to 3-105, an individual who instructs the lawyer on behalf of a client in relation to a financial transaction.

29. It is the Law Society's position that [REDACTED] was a "client" for the purposes of the Law Society Rules, Division 11 (Client Identification and Verification) because he was the individual providing the initial instructions to [REDACTED] on behalf of the organizational client, [REDACTED], with regards to the subject financial transaction. The Law Society submits that [REDACTED] was obligated to verify [REDACTED]'s identity using one of the methods set out in Rule 3-102(2)(a) or through an agent pursuant to Rule 3-104, prior to completing the transaction.
30. It is the Law Society's submission that the requirement to verify the identity of an instructing individual in addition to the organizational client is also set out in the Law Society's Client ID and Verification FAQs, the Winter 2019 *Benchers' Bulletin* and the Law Society's Client Identification and Source of Money Checklist.
31. The Law Society submits that [REDACTED] acknowledged that [REDACTED] was a client whose identity required verification as he provided the initial instructions to [REDACTED] as set out in his email dated February 1, 2024 which states:

7 – My understanding of the CIV rules at the time of the transaction in question was that it was necessary to obtain identification and verification of the client signing the relevant documents, in this instance [REDACTED]. I did not consider it necessary to do client identification and verification of [REDACTED] although I now realize based upon the definition of "client" that [REDACTED] is a "client" and client identification and verification should have been obtained from him as he provided the initial instructions.

32. The Law Society submits that because [REDACTED] gave closing instructions, his identity was also required to be verified by [REDACTED]. Further, as [REDACTED] was residing in the United States at the time of the subject financial transaction, the Law Society submits that [REDACTED] was required, pursuant, to Rule 3-104(5) to use an agent to verify [REDACTED]'s identity prior to completing the financial transaction.
33. The Law Society submits that [REDACTED] did not have a valid agent agreement in place to verify [REDACTED]'s identity on the basis that both agreements relied upon as confirmation of [REDACTED]'s verification contained inaccurate and incomplete information. Specifically, the Law Society points out that the 2022 Agent Agreement (with [REDACTED]) did not include a date or [REDACTED]'s signature, and the 2009 Agent Agreement (with [REDACTED]) was also not signed by [REDACTED].

34. The Law Society further submits that the Attested Documents obtained by [REDACTED], and relied on for the purposes of [REDACTED]'s verification, were not valid because they contained inaccurate information. The Law Society submits that Rule 3-104(6) is clear that a lawyer must not rely on information obtained by an agent unless they are satisfied that the information is valid and current. The Law Society submits that the documents:
- a. identified the client as [REDACTED], not [REDACTED], and were not amended to include [REDACTED] until November 6, 2023, well after the time that the financial transaction triggering the verification requirements occurred; and
 - b. stated that [REDACTED]'s driver's license was issued March 14, 2022 and this is incorrect as the issuance date appears to be January 2, 2020.
35. It is the Law Society's position that the Notice of Penalty dated July 4, 2024 including the amount of the penalty should be upheld.

[REDACTED]'s Reply dated August 28, 2024

36. [REDACTED] submits that he believes when he acknowledged his error of not identifying [REDACTED] in his letter of February 1, 2024, he had not realized that he had obtained client identification and verification in 2009.
37. [REDACTED] submits that the incorrect date on the Attested Documents and the fact that the 2022 Agent Agreement was undated and unsigned, and that there was reference to [REDACTED] rather than [REDACTED], are not substantive errors and should not be submitted as a basis for assessing a substantive infraction of the Law Society Rules.
38. [REDACTED] submits that his principal argument and the substantive issue in this matter is whether he breached the relevant rule by failing to obtain client identification verification from [REDACTED]. He submits that by obtaining client identification and verification of [REDACTED] in 2009 on behalf of the client, [REDACTED], the requirement to obtain identification and verification in 2022 from [REDACTED] was redundant and unnecessary.
39. It is submitted by [REDACTED] that the intent of the rule is to avoid wrongdoing by having the lawyer verify who the lawyer is dealing with. He submits this was accomplished at two separate times in 2009 and 2022. He further submits that [REDACTED] was a minor player in the transaction and his role was analogous to a realtor providing him with instructions to act on behalf of a vendor or purchaser

in a real estate transaction, or a trust company officer providing him with instructions to prepare a Will. He submits that when looking at the transaction in totality, not obtaining client identification and verification from [REDACTED] was not an infraction of the rule and should not be the basis for a finding of wrongdoing.

Discussion and Determination

The Law Society Rules

40. The applicable Rules are Rule 3-102 and 3-104.

41. Rule 3-102 provides in part:

Requirement to verify client identity

3-102 (1) When a lawyer provides legal services in respect of a financial transaction, the lawyer must

(a) obtain from the client and record, with the applicable date, information about the source of money, and

(b) verify the identity of the client using documents or information described in subrule (2).

(2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, authentic and current and information is valid and current:

(a) if the client is an individual

(i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that

(A) contains the individual's name and photograph, and

(B) is used in the presence of the individual to verify that the name and photograph are those of the individual,

(ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or

(iii) any two of the following obtained by the lawyer from a reliable source:

(A) information that contains the individual's name and address that is used to verify that the name and address are of those of the individual;

(B) information that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;

(C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;

42. Rule 3-104 provides in part:

Use of an agent for client verification

3-104 (1) A lawyer may retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*], provided the lawyer and the agent have an agreement or arrangement in writing for this purpose in compliance with this rule.

(2) [rescinded]

(3) [rescinded]

(4) [rescinded]

(5) A lawyer must retain an agent to obtain the information required under Rule 3-102 [*Requirement to verify client identity*] to verify the personal identity and must have an agreement or arrangement in writing with the agent for that purpose if the client

(a) is not present in Canada, and

(b) is not physically present before the lawyer.

(6) A lawyer must not rely on information obtained by an agent under this rule unless the lawyer

(a) obtains from the agent all of the information obtained by the agent under that agreement or arrangement, and

(b) is satisfied that the information is valid and current and that the agent verified identity in accordance with Rule 3-102 [*Requirement to verify client identity*].

(7) A lawyer may rely on an agent's previous verification of an individual client if the agent was, at the time of the verification

(a) acting in the agent's own capacity, whether or not the agent was acting under this rule, or

(b) acting as an agent under an agreement or arrangement in writing entered into with another lawyer required under this division to verify the identity of a client.

Was [REDACTED] Required to Verify [REDACTED]'s Identity Pursuant to Rule 3-102?

43. I do not accept [REDACTED]'s submissions that the requirement to obtain identification and verification in 2022 from [REDACTED] was redundant and unnecessary.

44. It is undisputed that [REDACTED] provided the initial instructions to [REDACTED] with regards to the subject financial transaction.

45. I conclude that [REDACTED] was a "client" as defined by Rule 3-98(1) and therefore [REDACTED] was required to verify [REDACTED]'s identity using one of the methods set out in Rule 3-102(2)(a) or through an agent pursuant to Rule 3-104, prior to completing the transaction.

Did [REDACTED] have a Valid Agent Agreement?

46. It is undisputed that [REDACTED], who was located in Virginia, USA at the time of the financial transaction provided the closing instructions and signed the sale documents. Accordingly, [REDACTED] was required pursuant to Rule 3-104(5) to use an agent to verify [REDACTED]'s identity prior to completing the financial transaction.

47. [REDACTED] relies on the client identification and verification obtained in 2009 and the 2009 Agent Agreement.

48. The Law Society has provided guidance to the profession regarding client identification and verification in their 'Practice Checklists Manual' which includes a sample agreement with agent for

verification of client identity. The Law Society recommends that lawyers use this sample agreement when retaining an agent to verify the identity of an individual client. The sample agreement requires signature by the agent and the lawyer. Both the 2009 Agent Agreement and the 2022 Agent Agreement are based on the Law Society's sample agreement.

49. The 2009 Agent Agreement contemplates that the agreement would be signed by the lawyer and the agent:
 - (a) paragraph 5 allows for the agreement be signed in counterparts; and
 - (b) signature lines for both the responsible lawyer and the agent are included on the second page.
50. The 2009 Agent Agreement is only signed by the agent. No explanation has been provided as to why [REDACTED] did not sign the 2009 Agent Agreement.
51. Agent Agreements which are not signed by both the lawyer and the agent indicate a lack of agreement. This increases the risk of non-compliance with the client verification process which is intended to help lawyers comply with their anti-money laundering obligations and manage the risk of becoming involved with bad actors seeking to use legal services to assist them in dishonest, criminal or fraudulent schemes.
52. Therefore, I conclude that the 2009 Agent Agreement is not a valid agent agreement.
53. In considering the 2022 Agent Agreement, it is undisputed that [REDACTED]'s firm did not select [REDACTED] and that [REDACTED] was selected by the client.
54. Further, the 2022 Agent Agreement was undated and not signed by [REDACTED]. The Attested Documents obtained by [REDACTED] contained inaccurate information.
55. Therefore, I conclude that the 2022 Agent Agreement is not a valid agent agreement.
56. The Law Society has provided guidance to the profession including in the Winter 2019 *Benchers' Bulletin* with respect to using an agent and in particular the obligation that lawyers must know their agent; their agent is the lawyer's agent and not the client's agent. Lawyers must use their judgment to choose a reputable person who understands what is expected and who will carry out the required work. Allowing a client to select an agent increases a lawyer's risk in becoming part of an arrangement to set up a scam on a lawyer which is to the lawyer's detriment.

57. I agree with the Law Society's submissions that Rule 3-104(6) is clear that a lawyer must not rely on information obtained by an agent unless they are satisfied that the information is valid and current. It is a lawyer's obligation to follow up to ensure that the agent carries out the work properly.
58. The Law Society implemented both Rule 3-102 and Rule 3-104 as components of a systemic effort to assist lawyers in complying with their anti-money laundering obligations and manage the risk of becoming involved with bad actors seeking to use legal services to assist them in dishonest, criminal or fraudulent schemes. This is for the protection of the public and to maintain the integrity of lawyers' use of their trust accounts.
59. The amount of the penalty imposed is not disproportionate when weighed against the breach of Rules 3-102 and 3-104, the harm that the anti-money laundering rules are intended to prevent and to ensure protection of the public. This is the overriding consideration when determining the amount of an administrative penalty.
60. The Law Society has made it a priority to educate lawyers in British Columbia about the rules that are intended to prevent potential fraud and money laundering, and to notify the profession of lawyers' corresponding obligations, especially the client identification and verification rules.
61. Canadian lawyers are exempt from other money laundering prevention programs and, as a result, the Law Society's safeguards and lawyers' compliance with and adherence to these rules have additional significance.
62. The original Notice of Penalty was issued on July 4, 2024 and levied the Administrative Penalty of \$5,000.00 payable by August 12, 2024.
63. I direct that pursuant to Rule 4-60(2)(c), [REDACTED] must pay the Administrative Penalty as originally assessed at \$5,000.00 by April 10, 2025.

Order

64. I therefore order that:

The penalty is confirmed and must be paid in accordance with the original notice delivered under Rule 4-59(3) and is due by April 10, 2025.

DATED March 10, 2025.

A handwritten signature in black ink, appearing to read "Michele Ross", with a long horizontal flourish extending to the right.

Michèle Ross
Chair of the Discipline Committee