

## Conduct Reviews 2025-01 to 2025-12

Publication of conduct review summaries is intended to assist lawyers by providing information about ethical and conduct issues that may result in complaints and discipline.

### Failure to respond

While representing their client in an ICBC personal injury matter, a lawyer failed to respond to thirteen communications from their client over a nine-month period, and failed to keep their client informed about the status of their case, having regard to a lawyer's obligations under rule 3.2-1 and Commentary 5 of the *Code of Professional Conduct for British Columbia*. The lawyer had discussed the client's financial situation and obtaining advance funds with the client. However, the lawyer did not correspond with the client further or keep them informed about the status of the case. The client retained new counsel to assume conduct of their ICBC matter.

The lawyer acknowledged their misconduct and apologized to their client. They admitted that they could not keep up with their file load and struggled with lack of administrative support. The lawyer has since made significant changes to their practice, including changing firms to a more supportive work environment and reducing their file load. A conduct review subcommittee was concerned that the lawyer had a history of failing to respond, and advised the lawyer that the public needs to have confidence and trust that their lawyer will keep them informed of the progress and status of their file. The subcommittee encouraged the lawyer to consider some of the counselling and other resources available including Lawyers Assistance Program of BC, the Law Society's Communications Toolkit and advice from a practice advisor or a Benchers. CR 2025-01

### Dishonourable conduct

While a litigant in a family business dispute, a lawyer failed to return a bank draft (the "Bank Draft") or disclose its whereabouts when requested, failed to make reasonable enquiries to determine if they were authorized to cash the Bank Draft, and cashed the Bank Draft when they had no reasonable basis to believe they were authorized to do so. The lawyer also failed to disclose evidence to the court which they relied on as justification to oppose the trustee's application for repayment, having regard to a lawyer's obligations under rule 2.2-1 and Commentaries of the *Code of Professional Conduct for British Columbia*, and the obligation to refrain from conduct unbecoming the profession, as defined in Rule 1 of the Law Society Rules and contemplated by s. 38(4)(ii) of the *Legal Profession Act*.

The lawyer held shares in a family business. The company sought to redeem the lawyer's shares via the Bank Draft, but the lawyer disputed the value of the shares and refused to accept the

payment. Litigation ensued. The company repeatedly requested the return of the Bank Draft, but the lawyer said they no longer had it. After the litigation settled, the lawyer cashed the Bank Draft. When the company applied for an order for repayment of the Bank Draft, the lawyer opposed the application. The Court found that the lawyer had misrepresented that the Bank Draft was lost and had wrongfully taken the proceeds. The lawyer was ordered to repay the funds, and to pay special costs of the court application. The lawyer told the Law Society that they cashed the Bank Draft because their mother told them a principal of the family business said she could have the proceeds as a gift. The lawyer did not disclose this explanation to the court during the litigation.

The lawyer was remorseful and admitted that their conduct fell below the standard of expectations. The lawyer explained that they were under significant stress during the litigation. They were influenced by familial duties and customs affecting their judgement, which created a conflict between their professional and family duties. The lawyer apologized to the complainants and acknowledged the harm they caused. A conduct review subcommittee advised the lawyer that their decision to cash the Bank Draft was questionable and their attempt to retain the funds without disclosing to the complainants or the court their grounds for doing so was dishonourable. It suggested that, in the future, the lawyer should take extra care before comingling their legal duties and relationships with family and/or business relationships, as this often creates tension between competing duties and interests. CR 2025-02

### **Breach of undertaking in loan transaction**

While acting for the borrower in a loan transaction, a lawyer breached their undertaking to opposing counsel to payout and close or paydown the unsecured debts of their clients, contrary to rule 7.2-11 of the *Code of Professional Conduct for British Columbia*. The lawyer failed to hold back the funds necessary to discharge the debts of their clients, and instead released the proceeds to their clients for them to arrange payment of the debts themselves. The lawyer did not initially admit there had been a breach of undertaking. He accepted the undertaking thinking it would be acceptable for the client to fulfill them instead of the lawyer.

A conduct review subcommittee advised the lawyer that their conduct was inappropriate because the undertakings required the lawyer to personally fulfill them. It stated that, if the lawyer receives an undertaking they cannot fulfill as set out, they must not accept the undertakings and/or request that the undertakings be changed. If the lawyer is unsure if an undertaking is appropriate, they can call a Practice Advisor or Benchers. The lawyer's counsel stated that the lawyer is no longer accepting undertakings that they cannot fulfill, and in the case of unsecured debtors they are sending the trust cheque directly to the debtor with a copy of the statement and a letter. They are no longer accepting undertakings where they have to close a debt. The subcommittee noted that counsel's submissions indicated that the lawyer did not have a clear understanding of the nature of a conduct review, or a clear understanding of undertakings or their ethical obligations

regarding them. The subcommittee was of the view that the lawyer would benefit from further assistance from the Law Society to assist with their practice. CR 2025-03

### **Breach of undertaking in a real estate transaction**

While acting for their non-resident seller in a real estate transaction, a lawyer breached their undertaking to hold back in trust 50% of the gross purchase price of the client's income producing property for the Canada Revenue Agency non-resident tax, contrary to rules 2.1-4, 5.1-6 and 7.2-11 and commentary of the *Code of Professional Conduct for British Columbia*. The lawyer was put on undertakings by the notary for the buyer which contained two different holdback percentages - to hold back 25% in trust of the gross purchase price if the property was used for personal use, or to hold back 50% in trust if the property was income producing. The client was earning rental income from the property, but the lawyer mistakenly held back 25% of the gross purchase price.

The lawyer became aware of the error during a Law Society compliance audit and acknowledged the breach occurred due to their inadvertence. The lawyer realized they had insufficient knowledge with respect to sales by non-residents and updated their precedents to indicate that holdback amounts need to be checked. A conduct review subcommittee recommended that the lawyer not accept undertakings that contain a choice, but rather obtain clarification in writing of the amount to be held back prior to accepting the undertaking. CR 2025-04

### **Trust accounting rules**

A compliance audit revealed a lawyer's failure to report nine trust shortages to the Law Society, and four instances of trust cheques being issued and returned as non-sufficient funds, contrary to Rules 3-63, 3-64, and 3-74 of the Law Society Rules and rules 7.2-11 and 7.2-12 of the *Code of Professional Conduct for British Columbia*. The trust shortages occurred as a result of bank and other administrative errors, and the NSF issues occurred as a result of the bank placing holds on incoming trust funds. The lawyer did not believe the nine trust shortages needed to be reported because funds had not been paid out of trust, the funds were in the account prior to the cheques being issued (for the NSF issues), and the shortages were the result of bank errors. At the time, they understood their financial institutions would not place a hold on trust cheques, certified cheques or bank drafts deposited into their trust accounts as they had not previously had an issue arise where trust deposits were placed on hold.

The lawyer acknowledged the breach of the trust accounting requirements and the gravity of those errors. They stated that they had become overwhelmed with work and lacked a mentor in their practice. They have since taken steps to ensure the errors will not be repeated, including moving to a different law firm, adjusting their workload and accounting procedures, and seeking advice from senior lawyers. CR 2025-05

### **Trust accounting obligations**

A lawyer improperly authorized trust withdrawals in five instances when there were insufficient funds held in trust for the client matters, creating trust shortages, contrary to Law Society Rules 3-63, 3-64(1) and 3-64(3). The lawyer also breached undertakings in three client matters involving real estate transactions, by filing executed transfer documents with the Land Title Office prior to having sufficient funds in trust to complete the purchases, having regard to a lawyer's obligations under rule 2.1-4(b) and contrary to rules 5.1-6 and 7.2-11 of the *Code of Professional Conduct for British Columbia*.

The lawyer advised that the issues were a result of bad recordkeeping and timing issues. They had overly relied on a senior partner, and failed to properly review the client file and trust accounts before authorizing the trust cheques to ensure there were sufficient funds held in trust. They failed to exercise their own independent judgment before using their Juricert and signing the trust cheques. The lawyer now practices on their own and has put safeguards in place, including the use of a legal software program that posts financial transactions to each trust account, and the use of a reminder system to deal with undertakings and transactions. CR 2025-06

### **Conflict of interest**

A compliance audit revealed that a lawyer acted in a conflict of interest by facilitating a number of loans between their parents, as the lenders, and personal injury clients, as the borrowers, contrary to a lawyer's obligations under one or more of rules 2.1-3(b), 3.4-1, 3.4-26, 3.4-28, and 3.4-34 of the *Code of Professional Conduct for British Columbia* and the fiduciary duties owed to their clients. The lawyer failed to clearly document the disclosure of all relevant information, obtain the express consent of all clients and have all clients obtain independent legal advice or sign waivers of independent legal advice. The subcommittee noted that, even with independent legal advice, the lawyer was in a position of potentially irreconcilable obligations after the loans had been arranged. Although the conduct ended before it came to the attention of the Law Society, the lawyer acknowledged their error and advised they would not arrange such loans again in the future. CR 2025-07

### **Engaging in unlawful conduct**

The lawyer acted for the borrower in a private lending transaction, secured by a mortgage against property that the borrower was holding in trust for their mother. The lawyer was aware that the trust agreement required the written consent of the client's mother (the beneficiary) and the father (the settlor) or the court's approval before a mortgage could be registered against the property. The lawyer attempted to address this issue by treating the retainer as being limited in scope and in having their client sign a waiver, authorizing the lawyer to complete the transaction without the consents or court approval, and purporting to absolve the lawyer from all liabilities resulting from the matter. After attempting to register the mortgage without consents, the lawyer requested the

borrower provide originally signed consent forms. Even though the borrower did not provide the originals as requested, the lawyer sent the forms along to be filed with the Land Title Office. A subsequent court decision determined that the borrower had obtained the loan by fraudulent means and that the consent forms had not been signed by the beneficiary and settlor, but were forgeries, as were the ID verification documents attached to the consents.

The lawyer's conduct was contrary to rules 3.1-2 and 3.2-7 of the *Code of Professional Conduct for British Columbia* as they facilitated a fraudulent mortgage as a result of failing to make reasonable inquiries in the face of suspicious circumstances and attempted to limit their professional obligations in having the client sign an improper waiver authorizing the lawyer to complete the transaction without consent or court approval. The lawyer advised the conduct review subcommittee that they will not act in future in matters where they are not competent and will be on guard where suspicious circumstances arise to ensure that they do not facilitate a fraud. The subcommittee recommended that the lawyer joined certain CBA and Federation groups for mentoring opportunities and access to a network of other practitioners. CR 2025-08

### **Misuse of trust account**

While acting for an offshore private lender in a non-arm's length transaction concerning the refinancing of mortgage debts, a lawyer permitted their firm's trust account to be used to receive and disburse \$500,000 in loan funds in objectively suspicious circumstances. The lawyer failed to make reasonable inquiries to determine that the loan transaction was legitimate, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia* and its commentaries.

The lawyer acknowledged that they had not inquired sufficiently about the client's business activities or the specific source of funds before receiving them into trust. The proposed loan transactions included a number of elements that warranted heightened scrutiny and inquiry by the lawyer, including that the loans were to be made between non-arm's length entities utilizing significant funds being transferred from offshore, the client's desire to proceed urgently, the properties were either already subject to foreclosure proceedings or were at a significant risk of foreclosures proceedings, and some of the parties to the transaction were subject to money laundering allegations through the Director of Civil Forfeiture.

The lawyer has revised their practices, increased their understanding of their money laundering prevention obligations, and have reviewed Law Society resources and discipline decisions to stay more informed about potential money laundering matters. (CR 2025-09)

### **Trust accounting obligations**

A compliance audit revealed that a lawyer permitted their assistant to create and authorize 71 electronic fund transfers over an 18-month period from the firm's trust account totaling over \$11,000,000, contrary to Rules 3-64.1(2) and 3-64(4) of the Law Society Rules (the "Rules"). For

each transfer the lawyer signed the required requisition form but their assistant entered the information on the banking platform and submitted it to the bank. The lawyer advised that in all instances they authorized, approved and supervised their assistant to complete the electronic funds transfers. However, contrary to Rule 3-64.1(2)(a)(ii), the lawyer did not use their password to enter data into the bank's system and authorize the electronic funds transfers themselves. The lawyer advised the subcommittee that they were not as familiar with Rule 3-64.1 as the ought to have been. The lawyer has thoroughly read and considered the Rules, altered their office procedures and now fully complies with requirements under the Rules for the electronic transfer of funds. CR 2025-10

In another matter, a lawyer deposited \$17,000 of retainer funds directly into a general account instead of a trust account, contrary to Rules 3-58, 3-63 and 3-72 of the Law Society Rules. The lawyer had been a partner at a large national firm until 2021, when they began practicing on their own in a semi-retired part-time fashion, and failed to open a trust account for their practice. In their self-report to the Law Society, the lawyer wrote that they had not understood that retainer funds needed to be specifically deposited into a Law Society approved lawyer trust account and that the affected clients did not suffer any financial loss. As soon as the lawyer discovered the breach, they self-reported. The conduct review subcommittee accepted that the breach was inadvertent and was a simple mistake, acknowledging that the lawyer had not previously been expected to put their mind to the day-to-day requirements of trust funds as they had been handled for them throughout their career. The lawyer has since taken two trust accounting courses and regularly reviews the trust accounting handbook, as well as has opened a pooled trust account and transferred the balance of the retainer funds into that trust account. CR 2025-11

### **Unsatisfied judgment**

The lawyer borrowed \$40,000 from a friend and former client on a "handshake" to help the lawyer during financial difficulties related to their practice. The lawyer repaid \$30,000 to the lender but then failed to make further repayments. The lender obtained a default judgment against the lawyer. The lawyer asked the lender to withdraw the default judgment as the lawyer did not want to report it to the Law Society. The lawyer failed to notify the Executive Director of the unsatisfied judgment within seven days of the date of entry, contrary to his obligations in Rule 3-50(1) of the Law Society Rules. The lawyer also filed two false annual practice declarations as they did not identify the unsatisfied judgment, contrary to his obligations under rule 2.2-1 of the *Code of Professional Conduct for British Columbia* (the "Code"). In exchange for the withdrawal of the default judgment, the lawyer provided the lender with two promissory notes. At no point did the lawyer advise the lender to seek independent legal advice, contrary to their obligations under rule 3.4-31 of the *Code*. After some further repayment by the lawyer, a dispute arose over the promissory notes, the second of which included an interest rate exceeding 60% (a criminal interest rate under Section 347 of the *Criminal Code*). The lawyer's position was that they did not think the second promissory note was enforceable anyway.

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The Lawyer admitted they did not manage things properly and had learned to keep better documentation of agreements/no longer rely on casual handshakes, to not draft and enter into contracts which they believe are of questionable enforceability, and to recommend independent legal advice and to clearly indicate in writing that they are not the other person's lawyer. CR 2025-12